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SUPREME COURT, U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1963/

No. 35 //

DEWEY McLAUGHLIN, ET AL., APPELLANTS,

vs.

FLORIDA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

FILED OCTOBER 28, 1963

PROBABLE JURISDICTION NOTED APRIL 27, 1964

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 585

DEWEY McLAUGHLIN, ET AL., APPELLANTS,

vs.

FLORIDA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

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[fol. 2]

**IN THE CRIMINAL COURT OF RECORD,
IN AND FOR DADE COUNTY, FLORIDA**

No. 62-1385

—
STATE OF FLORIDA,

—vs.—

DEWEY McLAUGHLIN and CONNIE HOFFMAN a/k/a
CONNIE GONZALEZ, Defendants.

—
NOTICE OF APPEAL

Come now the defendants, Dewey McLaughlin and Connie Hoffman a/k/a Connie Gonzalez and enter their appeal to the Supreme Court of Florida to review the judgment of the Criminal Court Of Record In And For Dade County, Florida, bearing date the 28th day of June, 1962 entered in the above styled cause and recorded in Book 79 at Pages 3 & 4 on the 28 day of June, 1962, and all parties to said cause are called upon to take notice of the entry of this appeal.

Robert Ramer, 305 N. W. 27 Avenue, Miami, Florida
and

G. E. Graves, Jr., 802 N. W. Second Avenue, Miami,
Florida, Attorneys for Defendants, By G. E.
Graves, Jr.

Clerk's Certificate to foregoing paper (omitted in printing).

Certificate of service (omitted in printing).

[Stamps

Filed Jul 16, 1962, J. F. McCracken, Clerk

Filed Jul 18, 1962, Guyte P. McCord, Clerk, Supreme
Court, by (Signature illegible), Deputy Clerk]

[fol. 4]

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

No. 62-1385

[Title omitted]

STIPULATION ENLARGING TIME FOR FILING
RECORD ON APPEAL

It is hereby stipulated and agreed between G. E. Graves, Jr., attorney for the defendants, and the Office of the Attorney General of the State of Florida that the time for filing record on appeal be enlarged thirty (30) days, the said period to begin on August 31, 1962.

Office of the Attorney General, State of Florida,
By James G. McHorner.

G. E. Graves, Jr., Attorney for the Defendants.

Clerk's Certificate to foregoing paper (omitted in printing).

[Stamp—FILED SEP 7 1962 (Signature illegible), Clerk
Criminal Court]

[fol. 6]

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

No. 62-1385

[Title omitted]

ORDER ENLARGING TIME FOR FILING RECORD
ON APPEAL—September 27, 1962

This cause this day coming on to be heard upon the motion of the defendants for an order enlarging the time for the Clerk's filing the record on appeal, and the Court being fully advised as to its judgment, it is thereupon

Ordered and Adjudged that the time for filing record on appeal be, and the same is hereby enlarged for twenty (20) days from the date of the entry of this order.

Done and Ordered this 27th day of September, 1962.

Gene Williams, Judge of Criminal Court of Record.

Clerk's Certificate to foregoing paper (omitted in printing).

[Stamp—FILED OCT 1 1962, GUYTE P. McCORD, Clerk Supreme Court, by (signature illegible), Deputy Clerk]

[fol. 10]

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, STATE OF FLORIDA,
DIVISION B

February Term, 1962

62-1385

THE STATE OF FLORIDA,

VS.

CONNIE HOFFMAN, also known as CONNIE GONZALEZ
and DEWEY McLAUGHLIN.

INFORMATION FOR NEGRO MAN AND WHITE WOMAN
HABITUALLY OCCUPYING SAME ROOM—
Filed March 1, 1962

In the Name and by Authority of the State of Florida:

Richard E. Gerstein, State Attorney of the Eleventh Judicial Circuit of Florida, prosecuting for the State of Florida, in the County of Dade, under oath, information makes that Connie Hoffman, also known as Connie Gonzalez and Dewey McLaughlin on the 23rd day of February, 1962, in the County and State aforesaid, the said Dewey McLaughlin being a negro man and the said Connie Hoffman, also known as Connie Gonzalez, being a white woman, who were not married to each other, did habitually live in and occupy in the nighttime the same room, in violation of 798.05 F. S.,

JHB:hht

2-28-62

contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Florida.

Richard E. Gerstein, State Attorney, Eleventh Judicial Circuit of Florida.

[fol. 11]

State of Florida:

County of Dade:

Personally appeared before me, Richard E. Gerstein, State Attorney of the Eleventh Judicial Circuit of Florida, who, being first duly sworn, says that the allegations set forth in the within Information are based upon facts that have been sworn to as true, and which facts, if true, would constitute the offense therein charged.

Richard E. Gerstein, State Attorney, Eleventh Judicial Circuit of Florida.

Sworn to and subscribed before me this 28th day of February, 1962.

J. F. McCracken, Clerk, Criminal Court of Record,
Dade County, Florida, By Jean Williams, D. C.

(Seal, Criminal Court of Record).

Defendants Connie Hoffman, also known as Connie Gonzalez and Dewey McLaughlin, arraigned in open Court on the within Information and pleaded not guilty.

T. C. Blount, Jr., Deputy Clerk, Criminal Court of Record, Dade County, Florida.

[fol. 12] [File endorsement omitted]

Witnesses for the State

1. Dora Gootnick, 732 2nd Street, Miami Beach, Fla.
2. N. P. Valeriani and
3. Stan Marcus, MBPD

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

MOTION TO QUASH INFORMATION—Filed April 11, 1962

Come now the defendants, by their undersigned counsel and move to quash the information filed against both of them and assign as reasons therefor the following:

1.

The information is vague, indefinite, uncertain and insufficient.

2.

The said information is so framed as to hinder and embarrass the defendants in such a manner as to prevent a fair trial.

3.

The information charges the defendants with a violation of Section 798.05, Florida Statutes, 1961, which statute is contrary to the constitution and laws of the State of Florida and the United States of America and is therefore null and [fol. 13] void for the following reasons:

a. The statute is so vague, indefinite and uncertain that it cannot be reasonably applied by the court of law.

b. The application of the statute is a denial of the defendants of the equal protection of the laws guaranteed by the constitution and laws of the United States of America.

c. The application of the statute is a denial of the defendants of the due process of law guaranteed by the constitution and laws of the United States of America.

d. The application of the statute is an invasion of the defendants' right to privacy.

G. E. Graves, Jr., Attorney for Defendants, 802
N. W. 2nd Avenue, Miami, Florida.

Certificate of service (omitted in printing).

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

MINUTE ENTRY—April 12, 1962

Division "A"

The Calendar Originally Scheduled for Division "B" of
This Court Was Disposed of as Follows:

Book 74 Page 44

Division "A"

April 12, 1962

[fol. 14]

STATE OF FLORIDA,

vs. #62-1385

CONNIE HOFFMAN, also known as CONNIE GONZALEZ
and DEWEY McLAUGHLIN.

NEGRO MAN AND WHITE WOMAN HABITUALLY
OCCUPYING THE SAME ROOM

Edward S. Klein, Assistant State Attorney.

G. E. Graves, Jr., Counsel for the Defense.

Counsel for the Defense presented a pending Motion to
Quash the Information, which Motion the Court denied.

The Defendants, Connie Hoffman, also known as Connie
Gonzalez and Dewey McLaughlin, were arraigned in open
Court by Edward S. Klein, Assistant State Attorney, and
each pleaded not guilty.

Book 74 Page 46

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

Case No. 62-1385-A

THE STATE OF FLORIDA,

v.

CONNIE HOFFMAN also known as CONNIE GONZALEZ.

VERDICT—June 28, 1962

We, the jury, at Miami, Dade County, Florida, this 28th day of June A. D. 1962, find the defendant, Connie Hoffman [fol. 15] also known as Connie Gonzalez, Guilty.

So Say We All.

Lauren S. Seabold, Foreman.

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

Case No. 62-1385-B

THE STATE OF FLORIDA,

v.

DEWEY McLAUGHLIN.

VERDICT—June 28, 1962

We, the jury, at Miami, Dade County, Florida, this 28th day of June A. D. 1962, find the defendant, Dewey McLaughlin, Guilty.

So Say We All.

Lauren S. Seabold, Foreman.

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

Case No. 62-1385-A

JUDGMENT—June 28, 1962

It appearing unto this Court that you, Connie Hoffman, also known as Connie Gonzalez, have been regularly tried and convicted of Negro Man and White Woman, Not Being Married to Each Other, Habitually Living in and Occupying, in the Nighttime, the Same Room, in Violation of Chapter 798.05, Florida Statutes, 1961.

[fol. 16] It Is Therefore the Judgment of the law and it is hereby adjudged that you are and stand convicted of the offense as above set forth.

What have you to say why sentence should not now be imposed upon you?

Saying nothing that could influence the Court in its decision.

SENTENCE

It Is Further Considered, Ordered and Adjudged that you be imprisoned by confinement at hard labor in the Dade County Jail for a term of thirty (30) days, and that you pay a fine of One Hundred and Fifty and no/100 Dollars (\$150.00) and the costs of the Court herein, taxed at \$102.25, and in default of such payment that you be confined at hard labor in the Dade County Jail for an additional term of thirty (30) days.

Done and Ordered in open Court at Miami, Dade County, Florida this 28 day of June, A. D. 1962.

Gene Williams, Judge.

(Filing and Recording Stamp Omitted).

Div. A B/ C

Book 79 Page 3

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

Case No. 62-1385-B

JUDGMENT—June 28, 1962

It appearing unto this Court that you, Dewey McLaughlin, have been regularly tried and convicted of Negro Man and [fol. 17] White Woman, Not Being Married to Each Other, Habitually Living in and Occupying, in the Nighttime, the Same Room, in Violation of Chapter 798.05, Florida Statutes, 1961.

It Is Therefore the Judgment of the law and it is hereby adjudged that you are and stand convicted of the offense as above set forth.

What have you to say why sentence should not now be imposed upon you?

Saying nothing that could influence the Court in its decision.

SENTENCE

It Is Further Considered, Ordered and Adjudged that you be imprisoned by confinement at hard labor in the Dade County Jail for a term of thirty (30) days, and that you pay a fine of One Hundred and Fifty and no/100 Dollars (\$150.00) and the costs of the Court herein, taxed at \$21.45, and in default of such payment that you be confined at hard labor in the Dade County Jail for an additional term of thirty (30) days.

Done and Ordered in open Court at Miami, Dade County, Florida this 28 day of June, A. D. 1962.

Gene Williams, Judge.

(Filing and Recording Stamp Omitted).

Div. A B / C

Book 79 Page 4

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

MOTION FOR NEW TRIAL—Filed July 3, 1962

Come now the defendants by their undersigned attorneys [fol. 18] and move the Court to set aside the verdict of the jury rendered in the above captioned cause and to award the defendants a new trial on the following grounds:

1.

The verdict is contrary to law.

2.

The verdict is contrary to the weight of the evidence.

3.

The verdict is contrary to the law and the weight of the evidence.

4.

The Court erred in overruling the defendants' motion to quash.

5.

The Court erred by overruling the defendants' motion for leave to be tried in absentia.

6.

The Court erred in the course of the trial by permitting Nicholas Valerioni to give his opinion as to whether the defendants were colored or white based upon his observation of the defendants and other persons, rather than requiring him to apply the rule set forth in the Statutes of the State of Florida defining Negro or colored person.

7.

The Court erred by requiring the defendants to be physically present during the trial, this causing them to give self incriminatory evidence.

Robert Ramer, 305 N. W. 27 Avenue, Miami, Florida
and

G. E. Graves, Jr., 802 N. W. Second Avenue, Miami,
Florida, Attorneys for Defendants, By G. E.
Graves, Jr.

[fol. 19] Certificate of service (omitted in printing).

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

ORDER DENYING MOTION FOR NEW TRIAL - July 3, 1962

This cause this day coming on to be heard on the motion of the defendants for a new trial and the Court having heard arguments of counsel and now being fully advised as to its judgment, it is thereupon

Ordered and Adjudged that the motion for a new trial be, and the same is hereby denied.

Done and Ordered this 3rd day of July, 1962.

Gene Williams, Judge.

(Filing and Recording Stamp omitted.)

Book 79 Page 176

[fol. 21.]

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

MINUTE ENTRY—July 3, 1962

Division "B"

"...

"Counsel for the Defense orally presented a Motion to Set Supersedeas Bond, which Motion the Court granted, setting Supersedeas Bond at Five Hundred (\$500.00) Dollars, for each Defendant in the above styled cause.

Book 79 Page 327

RECITATION OF APPROVAL AND
FILING OF SUPERSEDEAS BONDS

(And on July 16, 1962, the Defendants posted Supersedeas Bonds, each in the amount of \$500.00, which said Supersedeas Bonds were duly approved and filed by the Clerk of the Court on said date.)

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

ASSIGNMENTS OF ERRORS—Filed August 2, 1962

Come now the defendants, and assign as errors upon which they intend to rely in the Supreme Court of Florida the following:

1. The Court erred in overruling the defendants' motion to quash, which motion raised the question of the unconstitutionality of Section 798.05 Florida Statutes, 1961 on the following grounds:

A. The Statute is so vague, indefinite and uncertain that it cannot be reasonably applied by a court of law.

B. That the application of the Statute is a denial to the defendants of the equal protection of the laws guaranteed by the Constitution and Laws of the United States of America.

[fol. 22] C. That the application of the Statute is a denial to the defendants of due process of law guaranteed by the Constitution and Laws of the United States of America.

D. That the application of the Statute is an invasion of the defendants' right to privacy.

2. That the Court erred in overruling the defendants' motion for leave to be tried in absentia.

3. That the Court erred in overruling the defendants' motion for new trial.

4. That the Court erred by permitting a witness, Nicholas Valerioni to state his opinion as to whether the defendants were colored persons or white persons based upon his observation of the defendants and other persons rather than requiring him to apply the rule set forth in the Statutes of the State of Florida defining Negro or colored persons.

5. That the Court erred by requiring the defendants to be physically present during the trial, thus, requiring them to give self-incriminatory evidence.

Jack Greenberg, Esquire, 10 Columbus Circle, New York, New York, Robert Ramer, Esquire, 305 N. W. 27 Avenue, Miami, Florida, H. L. Braynon, Esquire, 802 N. W. Second Avenue, Miami, Florida

and

G. E. Graves, Jr., Esquire, 802 N. W. Second Avenue, Miami, Florida, Attorneys for Defendants, By G. E. Graves, Jr.

Certificate of service (omitted in printing).

[fol. 23]

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

CERTIFICATION AS TO PAYMENT OF COSTS
RE CONNIE HOFFMAN

(And the Clerk of the Court does hereby certify that he totalled the costs appearing of record on the progress docket of Case No. 62-1385-A ((State of Florida vs. Connie Hoffman, also known as Connie Gonzalez)), which said costs amounted to \$102.25, and that the receipt of the Honorable Thomas J. Kelly, Metropolitan Sheriff, Public Safety Department, Dade County, Florida, for said amount, numbered 40547, is attached to the Supersedeas Bond filed in said cause.)

CERTIFICATION AS TO PAYMENT OF COSTS
RE DEWEY McLAUGHLIN

(And the Clerk of the Court does hereby certify that he totalled the costs appearing of record on the progress docket of Case No. 62-1385-B ((State of Florida vs. Dewey McLaughlin)), which said costs amounted to \$21.45, and that the receipt of the Honorable Thomas J. Kelly, Metropolitan Sheriff, Public Safety Department, Dade County, Florida, for said amount, numbered 40548, is attached to the Supersedeas Bond filed in said cause.)

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

DESIGNATION OF RECORD ON APPEAL—Filed August 2, 1962

The Clerk of the above styled court is hereby directed to prepare a transcript of the record in the above styled cause in accordance with the following directions:

[fol. 24] 1. Recite the filing of the information.

2. Recite the arraignment.

3. Recite the filing on the motion to quash of the defendants.

4. Recite the plea of the defendants.
5. Recite the verdict of the jury.
6. Recite the judgment of the Court.
7. Recite the defendants' motion for new trial.
8. Recite the order of the Court denying defendants' motion for new trial.
9. Recite the filing of the defendants' notice of appeal.
10. Recite defendants' posting of supersedeas bond.
11. Recite the entry of the Court's order fixing the amount and conditions of the supersedeas bond.
12. Recite the filing and approval of the supersedeas bond.
13. Recite the filing of the assignments of error.
14. Recite the directions to the Clerk.
15. Certify the transcript of proceedings before the Court in conformity with the Rules of Practice of the Supreme Court of Florida and certify that the defendants have paid all cost which have been incurred in this cause up to and including the time the appeal was taken.

Jack Greenberg, Esquire, 140 Columbus Circle, New York, New York, Robert Kamer, Esquire, 305 N. W. 27 Avenue, Miami, Florida, H. L. Braynon, Esquire, 802 N. W. Second Avenue, Miami, Florida, G. E. Graves, Jr., Esquire, 802 N. W. Second Avenue [fol. 25] nue, Miami, Florida, Attorneys for Defendants, By G. E. Graves, Jr.

Certificate of service (omitted in printing).

[fol. 26]

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

No. 62-1385

STATE OF FLORIDA,

vs.

CONNIE HOFFMAN, also known as CONNIE GONZALEZ
and DEWEY McLAUGHLIN, Defendants.

Transcript of Proceedings—June 27, 1962

Proceedings had before the Hon. Gene Williams, Judge of the Criminal Court of Record, in and for Dade County, Florida, in the above-entitled case, commencing on June 27, 1962.

APPEARANCES:

Richard E. Gerstein, State Attorney, by Jack A. Tanksley and Myron Gold, Assistant State Attorneys, on behalf of the State of Florida.

C. E. Graves, Jr., Esq., on behalf of the Defendants.
[fol. 28] Thereupon the following proceedings were had:

The Court: Proceed.

**MOTION TO TRY CASE WITH DEFENDANTS' PHYSICAL ABSENCE
FROM THE COURTROOM AND DENIAL THEREOF**

Mr. Graves: May it please the Court, at this time on behalf of both defendants, we move for leave to try this case with the defendants physical absence from the courtroom.

Mr. Tanksley: Is that the end of your motion?

Mr. Graves: Yes.

Mr. Tanksley: To which the State objects, your Honor. The defendants should be present before the Court under the laws of the State of Florida and the jury certainly has a right to have an opportunity to see the defendants.

The Court: Do you wish to state any grounds for that motion?

Mr. Graves: May it please the Court, we submit that this is a trial of a misdemeanor and such being the case, at the election of the defendants, they may be tried in absentia with leave of Court.

We submit to your Honor that in this case the question of identification is very important, and that the defendants' presence before the jury could, and would, constitute self-incriminatory evidence.

Mr. Tanksley: Your Honor, I say this to the Court—[fol. 29] The Court: I will deny the motion. We have tried a few cases, misdemeanors, without the presence of the defendants, but it has been a very exceptional case and not too much involved, ordinarily, such as fishing without a license or something, but I don't think we have ever had such a situation where the Court granted leave in a formal trial to do without the presence of the defendants.

The motion is denied.

(Thereupon a jury was impanelled and sworn to try the case, and an adjournment was taken until 10 o'clock June 28, 1962.)

[fol. 30]

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

No. 62-1385

STATE OF FLORIDA,

vs.

CONNIE HOFFMAN, also known as CONNIE GONZALEZ
and DEWEY McLAUGHLIN, Defendants.

Transcript of Proceedings—June 28, 1962

Proceedings had and testimony taken before the Hon. Gene Williams, Judge of the above-styled Court and a jury, at the Dade County Courthouse, Dade County, Florida, in the above-entitled case, on June 28, 1962, pursuant to adjournment on June 27, 1962.

APPEARANCES:

Richard E. Gerstein, State Attorney, by Jack A. Tanksley and Myron Gold, Assistant State Attorneys, on behalf of the State of Florida.

C. E. Graves, Jr., on behalf of the Defendants.

[fol. 31] (Thereupon the following proceedings were had without the presence of the jury:)

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Graves: Before the jury comes in, your Honor, I would like to call your Honor's attention to the fact that at the arraignment both defendants filed motions to quash on the grounds that the Statute is so vague and indefinite as to be incapable of interpretation and also as being a restraint contrary to the Constitution and laws of the State of Florida and the United States, a denial of equal protection of laws.

At this time, your Honor, we wish to renew that motion.

Mr. Gold: That motion has been disposed of, your Honor, and was denied.

The Court: Apparently Judge Williard has already ruled on that.

Mr. Gold: I make a motion to strike counsel's motion as being improper at this time.

The Court: Granted.

Bring the jury in.

(Thereupon the jury entered the Courtroom, and the following proceedings were had:)

Mr. Tanksley: State concedes and waives polling.

[fol. 32] Mr. Graves: May it please the Court, the defense concedes the presence of the jury and waives the polling thereof.

The Court: Proceed.

OPENING STATEMENT ON BEHALF OF FLORIDA

Mr. Gold: At this stage of the trial I am going to make what we call an opening statement in which I will first read to you the Information, which is the vehicle by which the defendants are charged and brought before the Court for trial, and then I will briefly tell you what the State expects to prove in their case. After I am through making my opening statement, Mr. Graves, if he desires, can tell you what he expects the case to bring out.

"In the Criminal Court of Record in and for Dade County, Florida, February term 1962, State of Florida vs. Connie Hoffman, also known as Connie Gonzalez and Dewey McLaughlin, Information for A Negro Man and White Woman Habitually Occupying the Same Room.

"In the Name and by the Authority of the State of Florida, Richard E. Gerstein, State Attorney of the Eleventh Judicial Circuit of Florida, prosecuting for the State of Florida in the County of Dade under oath Information makes that Connie Hoffman, also known as Connie [fol. 33] Gonzalez, and Dewey McLaughlin, on 23 February, 1962 in the county and state aforesaid, the said Dewey McLaughlin being a Negro man and the said Connie Hoffman, also known as Connie Gonzalez, being a white woman, who were not married to each other, did habitually live in and

occupy in the nighttime the same room in violation of 798.05, Florida Statutes."

The State expects to call various witnesses. We will call a witness who was the owner of the premises where the defendants resided and she will testify about their residing there. She will also testify about various conversations she had with one of the defendants and then we will call the policeman who investigated the situation and made the arrest. Also they will testify about various conversations that the defendants had with them.

Then we expect to call other witnesses from the Miami Beach police department who will testify about various instruments and documents which the defendants were familiar with and presented with which will indicate certain facts, and then we expect to hear testimony from a witness who is connected with the State Department of Public Welfare and she will testify as to her knowledge of the case and also as to various conversations she had [fol. 34] with the defendant Connie Hoffman, and that is briefly what the State expects to prove.

Now Mr. Graves, if he likes, may make an opening statement to you.

OPENING STATEMENT ON BEHALF OF DEFENDANTS

Mr. Graves: May it please the Court, lady and gentlemen of the jury, as you recall yesterday on voir dire, you were repeatedly advised that it is the burden of the State to prove beyond and to the exclusion of every reasonable doubt and to a moral certainty that the defendants are guilty as charged of this particular offense.

There is a presumption that the defendants come to Court with—

Mr. Gold: I object to counsel arguing at this time. He is not going into what he expects to prove. His remarks are improper and not part of an opening statement.

Mr. Graves: I am merely advising the jury as to their position in the case. I just told the jury I was going to tell them what I expect to prove and that is what I am going to tell them now.

The Court: Go ahead.

Mr. Graves: Actually, the defendant doesn't have to prove anything in this case. The burden is on the State to prove that they are guilty as charged and then at the [fol. 35] outset I wish to say that nothing that I say is evidence in this case; certainly nothing that the State Attorney's office says is evidence in this case, nor is the vehicle which he puts before this jury evidence in this case.

All that we request is that you listen very carefully to the testimony as it unfolds in this case and then go into the jury room and make your deliberation based on what you heard.

We have nothing to prove. It is their duty to prove the case. Otherwise we are entitled to a verdict of not guilty.

Thank you very much.

Mr. Gold: The State will call Dora Goodnick.

Mr. Graves: Before this witness takes the stand the defendants request that the Rule be invoked.

The Court: All persons expecting to testify in this case come forward to be sworn.

(Thereupon the witnesses were sworn.)

The Court: All of the witnesses are instructed that while this case is going on, they are not to discuss the case among yourselves nor with anyone else except the [fol. 36] attorneys involved. You will have to remain outside the courtroom and be called in one at a time to testify.

(Thereupon the witnesses retired from the Courtroom.)

Thereupon: DORA GOODNICK was called as a witness by the State of Florida, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gold:

Q. Will you tell us your full name and address.

A. Mrs. Dora Goodnick, 732 2nd Street.

Q. That is on Miami Beach?

A. Yes.

Q. Dade County, Florida?

A. Right.

Q. Do you own that premises?

A. Yes.

Q. What kind of a house or premises is that?

A. I got efficiencies.

Q. In other words, you have apartments?

A. Yes.

Q. Do you know Connie Hoffman?

[fol. 37] A. Yes.

Q. Do you see Connie Hoffman in the courtroom?

A. Yes.

Q. Would you point her out.

Mr. Gold: Let the record show the witness has indicated the defendant, Connie Hoffman.

By Mr. Gold:

Q. When was the first time you saw Connie Hoffman?

A. In April, 1961 she came over with a man and she said she wanted to take my apartment.

Q. Is that man here today?

A. No.

Q. Would you describe this man?

A. No, he is not here.

Q. What did this man look like?

A. Tall. He works in the post office.

Q. Who did she tell you this man was?

A. "That is my husband," and she signed in and she took the place.

Q. Do you know what this man's name is?

A. "Hoffman", she said.

Q. What apartment did they move into?

A. Apartment 8.

Q. Do you know the defendant, Dewey McLaughlin?

[fol. 38] A. Right.

Q. Is that him? (Indicating the defendant.)

A. Yes.

Q. When was the first time you saw the defendant Dewey McLaughlin?

A. I saw him December.

Q. Of what year?

A. 1962.

Q. 1961 or 1962?

A. December 1961, I guess.

Q. Where did you see him?

A. First when the weather changed I went out on the street and saw my neighbors was glad to see me and they said, "Mrs. Goodnick, what happened; you letting colored people in your house."

I said—

Mr. Graves: If your Honor please, we object to hearsay testimony.

The Court: Sustained. Don't say what your neighbors told you.

The Witness: Anyway, I went into the house and I said, "Miss Connie, who is that gentleman?" and she said, "That is my husband."

Q. Was this in the month of February, 1962?

A. No. October, and she says, "He is my husband." [fol. 39] I said, "He is your husband? Connie, I want to speak to you; come outside."

She came outside and I said, "Look, Connie, what kind of business is that? You came in with a white husband and now he looks to me like a colored fellow," and she said, "No; he is a Spanish fellow," and so I said, "Anyway, you got to sign in as my husband," and I said, "You have got to sign in husband and wife."

She signed, and then I came the second day, the same day, and I reported to the police. I didn't want I should maybe do something wrong, and I told her, "I want you should move out; I don't want that business."

Q. Did you see Dewey McLaughlin and the defendant Connie Hoffman enter your premises in the month of February, 1962?

A. No. There was a white man there until October.

Q. When did they first move in?

A. Who?

Q. When did you first see Dewey McLaughlin?

A. December.

Q. Did you see him in January?

A. No.

[fol. 40] Q. January, 1962?

A. No. He was a couple weeks. I saw him a couple weeks and I moved him out.

Q. Do you remember which month that they moved out?

A. I think December.

Q. Was that around Christmastime? Were you sick at that time?

A. December they moved out. They didn't move out. She claimed she has got a husband a couple blocks away from me and I went over and was crying to him, "Please move them out."

Mr. Graves: I object to the conversation. I object to conversation between her and another person unless it can be established that either of these defendants was present at the time the conversation took place. I also would like for them to pin down as to what time the conversation took place, should it be admitted.

Mr. Tanksley: There is no reference to any conversation. She hasn't said anything about a conversation.

Mr. Graves: I object to the latter part and move it be stricken.

The Court: Sustained. Granted. The jury will disregard the last few words of the witness.

By Mr. Gold:

Q. Mrs. Goodnick, you stated you first saw— When did Connie move in with this white man?

Mr. Graves: If your Honor please, it is irrelevant and immaterial about Mrs. Hoffman moving in any place with a white man. We are charged specifically with her living with a colored man.

The Court: Overruled.

By Mr. Gold:

Q. Try and think back and recollect when the defendant, Connie Hoffman, moved in with a white man who she said was her husband.

A. October.

Q. Of what year?

A. 1961.

Q. When did you get sick, Mrs. Goodnick?

A. I got sick in February.

Q. In the month of February. Did you see Mrs. Hoffman or this defendant in the house in February, 1962?

A. Yes.

Mr. Graves: If your Honor please, I hate to keep interrupting, but I would like for him to indicate the defendant by name.

By Mr. Gold:

Q. Defendant Dewey McLaughlin.

[fol. 42] A. Yes.

Q. You saw him there. Was Connie Hoffman also at your place in February of 1962?

A. Yes.

Q. Now, describe in your own words the best you can how many times you saw each of them and what they were doing.

A. I saw Mr. McLaughlin going out in the morning and coming at night.

Mr. Graves: If your Honor please, the question is entirely too general. I would like to know specifically what time she is talking about and what she did at the particular time.

Mr. Gold: We have pinpointed the time to February of 1962. He can cross examine. I am not leading the witness. I asked how many times she saw them or what they did. I think it is a perfectly proper question.

The Court: First, if she can make the time more definite, all right.

Mr. Tanksley: It is to the month, which is February, which is the date in question.

The Court: It is still better to try to get a more accurate date, if you can.

By Mr. Gold:

Q. Do you remember the dates, the actual dates in the [fol. 43] month of February that you saw these defendants?

A. Yes, in the morning about half past seven.

Q. The dates—like either February 1st, 2nd or 3rd. Do you remember those days specifically what dates they are. If you don't you can say so.

A. It was December; I guess, the 20th, the 18th—I don't remember.

Q. You don't remember the date specifically. Tell me exactly what you saw them doing in the month of February 1962.

A. I saw them come out in the morning about seven or half past six with something like dinner he was carrying and I saw him about ten days to come in in the evening to come in the house. Certainly they was living together.

Q. Did you have an occasion in the month of February 1962 to visit the apartment?

A. I visited her and I told her—

Q. Who was in the apartment when you got there?

A. Mr. McLaughlin and Mrs. Connie.

Q. They were both there?

A. Sure.

[fol. 45] Q. Did you see any men's clothing in the apartment?

A. Yes, shirts and pants was hanging. Sometimes he took a shower. I was in the back and he was husband and wife. They was there living, she told me he is a Spanish man and I didn't care and I reported it to the police.

Q. Did you have a conversation with Connie about this?

A. Yes,—“Please move out, move out.”

Q. Why did you tell her to move out?

A. I said I think he is a colored fellow and I don't want it, so she didn't listen and I went to her husband and I begged him and he moved her out December.

Q. Who moved her out?

A. Her husband, December.

Q. You mean Hoffman?

A. Yes.

Q. He moved her clothes out?

A. That's right and I locked the door.

(A book was thereupon marked “State's Exhibit 1-A for Identification”.)

By Mr. Gold:

Q. I show you this book and turning to a specific page, [fol. 46] I ask you what appears on that page.

A. I think Mrs. Connie—

Q. What does it say.

A. "Mrs. Connie Hoffman". I don't know.

Q. You can't read that? Who signed that?

A. Mrs. Connie.

OFFER IN EVIDENCE

Mr. Gold: I will offer this into evidence and state that the exhibit will speak for itself.

Mr. Graves: No objection.

The Court: Admitted in evidence as State's Exhibit 1.

(The book referred to was thereupon marked "State's Exhibit No. 1".)

Mr. Gold: You may inquire.

Cross examination.

By Mr. Graves:

Q. I think you said your name is Mrs. Dora Goodnick?

A. Yes.

Q. How long have you been on Miami Beach?

A. I am here 18 years but I used to live in town. On the Beach I lived 12 years.

Q. Where is your native home?

Mr. Gold: I object to that question. I don't think it [fol. 47] is material where her native home is.

The Court: Overruled.

The Witness: I didn't hear you.

By Mr. Graves:

Q. Where is your native home?

A. On the Beach.

Q. Where were you born?

A. In Europe.

Q. Prior to April 1961 you didn't know anything about Mrs. McLaughlin, did you?

A. I did.

Q. You did?

A. She was living in my house.

Q. Mrs. McLaughlin was living in your house?

A. Yes, but with a white man.

Q. As a matter of fact, you don't know whether they were married or not, do you?

A. She told me this is my husband, "I married him and he is a very nice fellow, and that is my husband." That is what she said.

Q. And then you say this gentleman left?

A. The white one left.

Q. Now, Mrs. Goodnick, how many units are there in the apartment building which you occupy?

A. I got four units and a couple rooms.

Q. A couple rooms to each unit?

[fol. 48] A. No.

Q. How many rooms to the unit?

A. A room and a kitchen. It is a pullmanette.

Q. Do you stay on the premises at all times?

A. Yes, all the time.

Q. Do you have an office there of some kind?

A. No. It isn't such a big business I need an office.

Q. Do you have any employees assisting you in the operation of that apartment?

A. No. I do it myself with my husband.

Q. Do you have occasion to visit the apartments in which your tenants live?

A. When everything is all right and they pay me the rent I don't go in their places.

Q. Do they pay the rent in your apartment or do you go to them to collect the rent.

A. I go and collect the rent. Maybe something is needed to fix, I go in; otherwise, I don't.

Q. During the time in which the defendant Connie Hoffman lived in the apartment which you rented her, the two of you didn't get along very well, did you?

A. Why? We was very good friends. We was friends. The child used to make me nervous sometimes. I told her [fol. 49] I didn't have anything against her, no, sir.

Q. How often did you visit that apartment where Mrs. Hoffman was staying?

A. Not very often. They paid their rent and I didn't bother them and they didn't bother me.

Q. Let's pin it down, Mrs. Goodnick. As close as you can remember, how many times did you have occasion to go to the apartment where Mrs. Hoffman was living.

A. I don't know. When I needed her, I knocked on the door and went in. I didn't count.

Q. There was no necessity, as a matter of fact, for your going up there, was there?

A. No; I didn't have to go there.

Q. You can't recall how many times you saw a man in that apartment, can you?

A. Mr. McLaughlin?

Q. Yes, how many times.

A. I saw him go in and going out for ten or twelve days.

Q. Do you go to bed very early?

A. Yes.

Q. When you go to bed do you frequently get up to stir around during the night or do you sleep through the night [fol. 50] A. I sleep through the night and if I see something, maybe somebody went in this way, I put on my robe and I go and give a look but I don't go in the apartments; no, sir. I don't bother nobody.

Q. As a matter of fact, Mrs. Goodnick, you have never seen Mr. McLaughlin in that apartment after dark, have you?

A. Yes, I did. In the back sometimes I don't go so early. He is washing and taking a shower and I didn't mean—

Q. What time of the evening was that?

A. Eight o'clock, taking a shower.

Q. You don't know whether he left after taking the shower or not, do you?

A. I didn't hear you.

Q. You didn't see him leave that night, did you?

A. No.

Q. As a matter of fact, he might have left right after taking a shower?

A. Maybe.

Q. Can you recall any other occasions on which you saw Mr. McLaughlin in that apartment?

A. The door is with a screen and when I pass by I [fol. 51] heard them talking and everything, sometimes 11 o'clock, sometimes ten. I didn't took attention to that. I know he is husband and wife and they pay me the rent. I didn't bother them.

Q. But you didn't see him leave on either occasion, did you?

A. No, I didn't.

Q. As a matter of fact you don't know whether he left or not on those nights when you saw or heard him at approximately 11 o'clock.

Mr. Gold: It is repetitious.

The Witness: I know he was there a couple nights sleeping. It was early in the morning and he went out and he went in to wash. The door was open. I saw him a couple times, he is in the house and was sleeping. Then she used to call me in and the bed was there and I saw him. I swore, and I saw him there but I couldn't tell every day the two or three weeks he was in my house, but I saw him living there.

By Mr. Graves:

Q. I think on direct examination you testified you saw some men's clothing in the apartment.

A. Yes, his shirts, his pants was hanging. I don't want to say but one time he was drunk, excuse me, and he was all naked without clothes, if you want to know.

[fol. 52] Mr. Graves: I move to strike that answer as being not responsive to anything that was asked on cross examination here. She volunteered that.

Mr. Gold: He asked what he did and she responded.

Mr. Graves: I would like to have the question read back.

(The question was read by the Reporter.)

Mr. Graves: The question referred to clothes, your Honor.

The Court: Overrule the objection. Proceed.

By Mr. Graves:

Q. Mrs. Goodnick, will you please describe the floor plan of the apartment which you rented to Connie Hoffman.

A. What? Explain.

Q. The floor plan, how the rooms were laid out.

A. One room and a kitchen. There is a nice couch and a double bed.

Q. Where is the bathroom in that apartment in relation—

A. The bathroom—

Q. —in relation to the front door.

[fol. 53] A. The front door is there and the back is another door with a screen. I was hanging something in the back and he didn't know I am there and he ran into the toilet so I saw him, but I didn't want to tell that but now if you want I tell you, and that is the truth.

Q. I just asked you where the bathroom is located.

A. Where it is supposed to be.

Q. Can you see into the bathroom from the front door?

A. I could. There is a screen door. I am not lying. I saw it, I saw it.

The Court: Just answer the questions.

The Witness: That is why I moved her out.

The Court: Just answer the questions.

By Mr. Graves:

Q. Is there a shower curtain in that bathroom?

A. Yes.

Q. Was it drawn on the occasion when you saw him?

A. He wasn't under the curtains. He went in for water or something. He was naked. That is why I told her, "I don't want you; you can't stay one more minute; I want you to move out."

[fol. 54] Q. How did you happen to get into the apartment when you saw him that day?

A. I didn't go in.

Q. You saw him from the outside of the apartment?

A. Yes. I didn't peek either. I went to hang the wash.

Q. I think you testified that you were sick in February of 1962; is that correct?

A. Yes.

Q. Were you confined to your bed during that time.

A. I was sick and I could not go to hang up something. I was real sick.

Q. You could not move around the apartment house; is that correct?

A. I could not what?

Q. You could not move around the apartment house. Were you sick in bed?

Mr. Gold: Your Honor; she is about to answer and he is cutting her off.

The Court: Were you sick in bed?

The Witness: I was sick in bed. I had arthritis and I had bronchitis. Sometimes I was real sick and sometimes I used to walk over. You wouldn't catch me in a lie and [fol. 55] that is the truth. She knows, also.

The Court: Just answer the questions, please.

By Mr. Graves:

Q. Did you go to a doctor during that time?

A. I went to about six.

Mr. Gold: Your Honor, I object.

The Witness: That's OK.

By Mr. Graves:

Q. Did you go to a hospital?

A. Only to the doctor.

Q. Were you sick in January of 1962?

A. Yes, I was sick.

Q. The same as you were in February, 1962?

A. No. I got better and then I got sick again. He saw I was sick, too, when he came.

Q. Were you also sick in December of 1961?

A. I was sick. I am telling you. Sometimes they gave me every day a needle, seven needles.

Q. It is your testimony you were sick.

A. And I went to the doctor and I went and took care of my place.

Q. You were sick with an arthritic condition in October, November and December of 1961?

A. All winter I was sick. That is a sickness you could [fol. 56] go out, even if you are sick.

Q. Also in January and February of 1962?

A. Yes.

Q. And Mrs. Hoffman moved out in February of 1962?

A. She didn't move out. I called her husband. I didn't see her even then, and her husband came and moved her out. And the same day when he moved out the things she came over to my door with jealousies, you know, and it was open and she came over—"I am going to kill you; I am going to kill you." I closed the windows and I didn't answer her.

Mr. Graves: You may inquire.

Mr. Gold: I have no further questions.

Thereupon: DETECTIVE STANLEY MARCUS was called as a witness by the State of Florida, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gold:

Q. Please state your name and official position.

A. Stanley Marcus. I am a detective, Miami Beach Police Department.

[fol. 57] Q. In the course of your official duties, and in your official capacity, did you have an occasion to be involved in an investigation concerning a negro man and a white woman living together on Miami Beach?

A. Yes, sir.

Q. Who were the persons or parties involved?

Mr. Graves: If your Honor please, at this point I would like to interpose an objection and ask that the jury be excused and retire for just a second.

(Thereupon the jury retired from the Courtroom and the following proceedings were had:)

Mr. Graves: May it please the Court, from all appearances, this witness is going to testify about an investigation he made regarding a negro man and a white woman living together and I think at this juncture we should have a ruling as to whether or not this witness, as well as other witnesses who will testify as to whether or not the man appeared to be a negro or whether or not he is a negro within the meaning of the statute and if so, did he investigate him in the light of that fact.

Mr. Tanksley: That is a matter for cross examination. This officer can testify what his investigation was and [fol. 58] counsel can bring out any of that.

Mr. Graves: The word "negro"—

Mr. Tanksley: Excuse me. The question of whether a person is a negro or not is for the jury to determine based on the testimony and the evidence introduced during the case.

Mr. Graves: When he refers to "negro" he is going to create the impression in the minds of the jurors that this is actually a negro, which is not necessarily a fact.

The word "negro" is defined in the statutes of the State of Florida and until such time as it is established that he is a negro within the meaning of the statute, we don't want him referred to as a negro before this jury.

Mr. Gold: That is a question for the jury to determine. That is their province.

The Court: I think so. I think on cross examination of these witnesses you will be able to bring that out but I think it is going to be up to the jury.

Mr. Graves: Is your Honor's ruling that before it is established he is a negro according to the law of the State of Florida you are going to let him testify that he thought he was a negro?

[fol. 59] I might let him testify about someone appearing to be a negro.

Mr. Gold: This is a question of fact, your Honor.

Mr. Graves: It is a mixed question of law and fact, your Honor.

The Court: Actually, it is irrelevant what his investigation was about. It is what he did, not as to his investiga-

tion. It borders on hearsay. It is what he did, rather than the results of his investigation.

Mr. Gold: I will rephrase my question then, your Honor.

(Thereupon the jury returned to the Courtroom and the following proceedings were had:)

Mr. Gold: State concedes, waives polling.

Mr. Graves: Defendant waives polling.

By Mr. Gold:

Q. Detective Marcus in the course of your official duties, did you have occasion to come in contact with one Dewey McLaughlin?

A. Yes.

Q. Do you see that person in the courtroom today?

A. Yes (Indicating Dewey McLaughlin).

[fol. 60] Q. Did you also have occasion in the course of your official duties to come in contact with one Connie Hoffman, also known as Connie Gonzalez?

A. Yes.

Q. Do you see that person in the courtroom?

A. Yes (Indicating Connie Hoffman).

Q. On what date did you first come in contact with these defendants?

A. That would be February 23, 1962.

Q. Tell me exactly what you did and what occurred?

A. On that date at 7:15 P.M. Detective Valeriani and myself went to 732 2nd Street.

Q. Is that the premises owned by Dora Goodnick?

A. Yes. We observed Mrs. Goodnick at the front of her apartment building at that location. I asked her if a Connie Hoffman did in fact live in one of the apartments.

Mr. Graves: Your Honor—

The Court: Sustained. Don't tell what she said.

By Mr. Gold:

Q. Pursuant to that conversation, what did you do?

A. Went to Apartment 8.

[fol. 61] Q. Will you describe the premises where Apartment 8 is. What kind of premises is that?

A. It is apparently a small cottage or bungalow located to the rear of 732 2nd Street.

Q. All part of the same premises?

A. Yes.

Q. On ground level?

A. Yes.

Mr. Graves: I object to counsel leading the witness.

The Court: Sustained.

By Mr. Gold:

Q. Describe exactly the position of Apartment 8 in reference to the surrounding area.

A. Apartment 8 is located directly to the rear of the building at 732 2nd Street. There is a short walkway. In order to get to Apartment 8 you would necessarily walk south from the front of 732 2nd Street and you would come directly upon Apartment 8.

Q. Tell us whether or not Apartment 8 is on the ground or up two stories or what.

A. It is on the ground floor.

Q. Tell me exactly what happened as you approached the apartment.

A. When Detective Valeriana and I approached the [fol. 62] apartment I knocked on the front door. A male voice was heard to call out, "Come in, Connie." I knocked again and a voice again replied, "Who it is?" and at that point I identified myself.

Q. Was this in English or Spanish?

A. It was in English. At that point I identified myself as a police officer employed by the City of Miami Beach. With that we had silence for a moment. Again I knocked and the answers forthcoming were in Spanish.

Q. Do you understand Spanish?

A. I do not, and I again knocked on the door. I knocked four or five times and I said, "Is anyone in there; will you please answer the door," and the answers were again forthcoming in Spanish.

Q. Does Detective Valeriani speak Spanish?

A. Yes. At that point Detective Valeriani went around to the rear door of Apartment 8. A few minutes later I

heard Detective Valeriani inside of Apartment 8 talking to Dewey McLaughlin. Detective Valeriani opened the front door of Apartment 8 and admitted me.

Q. What did you find when you came in.

Mr. Graves: Just a minute. I would like to ask a few preliminary questions to see whether or not this evidence which he is about to present to this jury and this [fol. 63] court should be suppressed.

Mr. Gold: We haven't offered any physical evidence.

Mr. Graves: Testimony is the same.

Mr. Gold: Testimony is not evidence.

The Court: Unless there is some physical evidence involved.

Mr. Graves: As to what he saw on the premises, if he legally entered your Honor—

Mr. Gold: If there is going to be any further argument—

The Court: Take the jury out.

(Thereupon the jury retired from the Courtroom, and the following proceedings were had:)

The Court: Before you do anything on that question, you are going to have to establish the right of McLaughlin to be there, his proprietary right. Otherwise, he can't question any search, seizure or illegal entry, at any rate.

Mr. Graves: There is testimony before the Court that Connie Hoffman—

Mr. Gold: She wasn't there.

Mr. Graves: She lived there; she is a defendant and is entitled to the benefits of the law on search and seizure. [fol. 64] She lived there. There is no question about it according to the testimony up to this point.

Mr. Gold: If you want to put him on the stand and say he lived there—

Mr. Graves: I don't have to do that. We are trying Connie Hoffman, as well as Dewey McLaughlin.

Mr. Gold: Your Honor, first of all, I would say this: He has to establish proprietary interest in the premises and two, even if he could, I don't believe that the laws in reference to legal search and seizure— We haven't introduced any physical evidence in the case as a result of him going to the apartment.

I am not agreeing that they entered illegally. And third, that is not the redress. Counsel knows if he feels they entered the apartment illegally he can file a civil suit if he wants.

Mr. Graves: That is quite possible.

Mr. Gold: As far as this proceeding, there is no basis at all for this objection, if your Honor please.

Mr. Graves: If your Honor please, there has been no testimony so far showing that this man went there armed [fol. 65] with a search warrant or that he had reason to believe a felony was being committed.

Mr. Gold: First you said you wanted to ask some questions.

Mr. Graves: Yes.

Mr. Gold: I would like a ruling from the Court whether or not he is in a position legally at this time to ask the questions in reference to search and seizure.

The Court: I will take it under advisement. The jury isn't here, so nothing can be harmed.

Examination.

By Mr. Graves:

Q. Officer Marcus, on February 23, 1962, when you went to the premises commonly known as 732 Northwest 2nd Street, were you armed with a search warrant authorizing you to search those premises?

A. What is the address?

Q. 732 NW 2nd Street—I think that is the address commonly.

A. No.

Q. What address did you have?

A. 732 2nd Street.

Q. Do you recall the question?

A. Yes; you asked if I had a search warrant.

Q. Yes. Did you?

[fol. 66] A. No, sir.

Q. In order to get to these premises which you have described on the back of the property, you had to go through private property, didn't you?

A. That's right.

Q. There is a walkway that leads from the street to that cottage; is that right?

A. That's correct.

Q. Do you know who lives in that apartment or who used to live in that apartment on the date in question, February 23, 1962?

A. I believe I do.

Q. Who.

A. Connie Hoffman.

Q. Is that the same Connie Hoffman on trial here?

A. Yes, sir.

Q. I think you said Officer Valeriana was with you. Did he have a search warrant?

A. No, sir.

Q. And he had to go the same way that you did to get back to the cottage?

A. That's right.

Mr. Graves: No further questions.

Examination.

By Mr. Gold:

[fol. 67] Q. Why did you go to the premises in the first place?

A. We were conducting an investigation pertinent to a possible contributing to the dependency of a minor case.

Q. What was this based upon?

A. Information received by the commanding officer of the juvenile aid bureau.

Mr. Gold: I have no further questions.

By the Court:

Q. Do you know of your own knowledge how Detective Valeriani got into the apartment?

A. Yes, sir.

Q. How? When I say of your own knowledge—

A. It was nothing I saw, your Honor.

Q. You don't know how he got in, whether anyone let him in.

A. Anything I would say would be hearsay, I am afraid.

Q. Actually at this point there is nothing to indicate that entry was illegal.

Mr. Gold: I further say that I don't think he could show proprietary interest in the premises.

The Court: He says the other defendant could.

[fol. 68] Mr. Gold: But she wasn't there at the time.

Mr. Graves: That makes the cheese more binding, if she were not there.

The Court: At any rate, the Court will be in recess for ten minutes.

(Thereupon a short recess was taken, after which the witness resumed the stand and the following proceedings were had out of the presence of the jury.)

By Mr. Gold:

Q. Detective Marcus, it is my understanding that when you got into the apartment, Detective Valeriani and the defendant McLaughlin were already there?

A. That's correct.

Mr. Gold: For this purpose then, I think we ought to call Detective Valeriani.

The Court: All right.

Thereupon: NICHOLAS VALERIANI was called as a witness by the State of Florida, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gold:

[fol. 69] Q. State your name and official position.

A. Detective Nicholas Valeriani, Police Department City of Miami Beach.

Q. Were you with Detective Marcus on the 23rd day of February when you arrived at the premises at 732 2nd Street, Miami Beach?

A. Yes.

Q. Did you approach Apartment 8?

A. Yes, we did.

Q. Tell me exactly what happened.

A. We arrived at the apartment, looked for Mrs. Connie Hoffman. She was not in the apartment when we arrived. We knocked on the door and a male voice answered, "Connie? Come in," and right off we didn't do anything further. We just knocked again, and the male voice asked who was there and Detective Marcus stated "Police" and then we heard some— We could not make out what was being said but I recognized that it was in Spanish.

Q. Do you understand Spanish?

A. Yes, I do, and nothing else was said except this talking and there could be heard some rustling and noise in the rear of this apartment. There was quite a delay.

At this point I became suspicious that the party might be going out the back door.

[fol. 70] We passed Mrs. Goodnick—rather, I did—as I went around and I said, "Is there a back way?" and she said "Yes" and motioned toward the rear.

Q. Mrs. Goodnick gave you permission to go up there?

A. Yes. I went to the rear and as I was approaching, as I turned around to go to the rear or the other exit on Apartment 8 I saw this colored male come out this door.

Q. He opened the door?

A. Yes. He opened the door and came outside and I confronted him at this point and identified myself to him.

Q. Exactly what happened then? Was this conversation in English or Spanish?

A. It started out to be in Spanish and as I asked him for identification in Spanish it was obvious he understood English, so it was all in English then.

Q. Did he show you identification?

A. Yes. He produced— The main thing I recognized was an ID card.

Q. Describe the ID card.

Mr. Graves: I object to the description of the ID card on the ground that the best evidence would be the card itself.

[fol. 71] Mr. Gold: Your Honor, we are going into this solely for the purpose of determining in reference to the arrest. The jury is not present, so I don't think it makes much difference what comes out at this point.

Mr. Graves: Even on a special inquiry as to whether or not the evidence should be suppressed, your Honor, in my opinion of the law, it is that the rules of evidence still apply.

The best evidence rules would foreclose any testimony as to what was on the card, inasmuch as the card itself would be the best evidence.

The Court: Those rules of evidence don't apply on legal questions of search and seizure and arrest. Probable cause comes in here, too, so that even hearsay evidence and the best evidence rule does not apply.

By Mr. Gold:

Q. What kind of card was this?

A. It is procedural with anybody we have knowledge of working on the Beach or residing on the Beach and having employment there, that the first identification required or asked of is a civilian registration card.

Q. Is that an ordinance of the City of Miami Beach?

[fol. 72] A. Yes. There is an ordinance requiring anybody who is employed in any work dealing with the public to have this civilian registration card.

Q. Did he show you the card?

A. Yes, he did and I noticed the date of registration was January 12, 1961 and I knew that he was still employed and he stated he was still working in the hotel on the Beach.

Q. That was on February 23rd?

A. Yes, so I knew that— These cards run for a year period so that this card had to have expired and he had not renewed it, but it showed information on it regarding his status.

Q. And then you went into the apartment?

A. Yes, sir. He and I walked in and at that point Detective Marcus was also coming around and we all three entered the apartment and we asked him if Connie Hoffman was there and he said she was outside looking for the boy.

Q. Did you place him under arrest on any charge?

A. Yes, sir. Upon asking him again for certain information that he was working at a hotel and seeing that the police card had expired, we arrested him for failure to [fol. 73] make civilian registration.

Q. You observed this from the card when you were outside the premises?

A. Yes.

Q. And then you went into the apartment?

A. Yes, sir. He and I walked in.

Q. Did he make any statements to you?

A. He was fairly cooperative. He was hesitant at first. There were some questions that he stammered on and made off like he didn't want to answer and he was fairly cooperative and he came forth with the statements regarding the period of time that he was living in this room with—

Q. All the statements made by him were given freely and voluntarily?

A. Yes.

Q. There was no promise of reward or threat of punishment of any sort?

A. No.

Mr. Gold: You may inquire.

Cross examination.

By Mr. Graves:

Q. I will try hard this time Officer Valeriani—is that it?

A. Thank you, sir.

[fol. 74] Q. When you went to the back of the apartment and announced your presence— You did that, is that correct?

A. I had my identification prepared, yes.

Q. The door was not open?

A. Yes. He had come out the door and came into my arms. I was just turning the corner of this bungalow when he came at me and was already out the door. He was in the process of shutting the door as he was out.

Q. How did you happen to get into the apartment?

A. We walked in with him from this back door.

Q. Was it at his invitation or at your request?

A. At our request. He didn't offer any type of refusal of entrance. We told him we were looking for Connie Hoffman.

Q. Did you tell him you were there investigating him?

A. Not at this point. This brought in other circumstances because we had information—

Q. Specifically what did you say your business was there? [fol. 75] A. What do you mean by that?

Q. What did you tell him your business was on the premises at that time?

The Court: Your question is what he told him his business was.

The Witness: We were inquiring as to—first of all, we were looking for Connie Hoffman pertaining to a child that we had information that was being neglected and was lacking in supervision and we had information and had observed for some time and it was on that basis that we were sent over by our supervisor so it was, her we were primarily interested in finding, and we had information she was living and residing in Apartment 8.

Q. Officer Marcus was with you, wasn't he?

A. Yes.

Q. Do you know what his business on the premises was at that time?

A. We were assigned there together.

Mr. Graves: I have no further questions.

Redirect examination.

By Mr. Gold:

Q. Did you ever see the child?

[fol. 76] A. Later on that evening we had it located and we had to do further investigation after we had both parties at the station.

Mr. Gold: That's all.

The Court: At this point it does not appear that there was any evidence observed or secured inside the apartment as far as I can tell.

Mr. Graves: Your Honor, may I anticipate? Suppose there is testimony forthcoming. While the jury is out we might as well settle that question.

The Court: Yes. Settle it as much as you can at one time when the jury is out.

Mr. Graves: It appears that these officers went on the premises for the purpose of investigating delinquency or dependency of a child and the defendant Dewey McLaughlin admitted them. Now, if he knowingly admitted them for that purpose, anything else they saw on the premises not related to the child should be excluded, your Honor, under the law of illegal search and seizure.

The Court: Let's ask him. I don't know whether they saw anything.

Mr. Graves: I want to anticipate, instead of sending the jury out two or three times.

[fol. 77] The Court: After you got into the apartment what, if anything, did you see connected with this case?

The Witness: We didn't conduct any search but there were things observable to us, such as two of his shirts that we ascertained if they belonged to him. They were hanging at the foot of this double bed. There was a little sofa and there were two shirts and also part of other apparel of his and we came forth with questions in conversation relative to his period of time there and had the child been kept there and he stated at least on one occasion the child was there while he was sleeping there and he stated—

Mr. Gold: Was he under arrest at that time?

The Witness: Yes, for the civilian registration.

Mr. Gold: First of all, I think we have a legal arrest.

The Court: The whole thing revolves around the other defendant. The Court will have to instruct the jury that anything said by one defendant can't be held against the other.

Mr. Gold: I have some cases here, your Honor, in Florida [fol. 78] cases, which holds the proposition in reference to statements; it doesn't make any difference whether there was an illegal search and seizure.

The Court: I understand that any voluntary statements—

Mr. Tanksley: They would not be binding against her.

The Court: All right. Deny the motion to suppress. Bring the jury in.

(Thereupon the jury returned to the Courtroom, and the following proceedings were had:)

Mr. Gold: State concedes; waives polling.

TESTIMONY OF DETECTIVE STANLEY MARCUS
(RESUMED)—DIRECT

I believe, before the jury was sent out, Detective Marcus, I asked you what did you find when you came in the apartment.

A. I observed Dewey McLaughlin and Detective Valeriani. At that point I interrogated Dewey Martin and I asked him whether he was in fact living in that apartment. All of his answers were in Spanish. I did not understand.

Detective Valeriani began conversing with McLaughlin in Spanish. At that point Dewey was suddenly able to [fol. 79] answer any questions in English, so that I could understand him. I asked him if in fact he was living in that apartment and he said he had been living there approximately two weeks.

I asked him if he was living there with Connie Hoffman and he said yes, she was living there with him for the past two weeks, and he also said that prior to that they had been living together in the City of Miami for a period beginning sometime late in December of 1961.

The Court: Members of the jury, at this time the Court instructs you that any statements or admissions made by one defendant in this case, Defendant McLaughlin at this point, cannot be held against the other defendant Connie Hoffman, who was not present at the time.

Proceed.

The Witness: I observed two shirts hanging on the door of what seemed to be a portable closet. I asked Dewey McLaughlin if those shirts were, in fact, his, and he said they were. He had two shirts hanging there. I inquired as to his employment and he said he had been employed in a hotel on Miami Beach. I asked Dewey McLaughlin if he had had relations with Connie Hoffman—

[fol. 80] Q. What kind of relations?

A. Sexual relations.

Mr. Graves: If your Honor please, we object to the question regarding sexual relations as being irrelevant and immaterial to the issue. The question is solely whether they occupied a bedroom.

The Court: It might be evidence in that respect. Overruled.

The Witness: McLaughlin stated to me that at least on one occasion he had sexual relations with Connie Hoffman. I pointed to a double bed that was in the room and asked him if he, in fact, slept on that double bed with Connie Hoffman and he replied that he did sleep in that double bed with Connie Hoffman.

By Mr. Gold:

Q. Let me ask you this: Describe the room.

A. To my recollection, it was what might be considered an efficiency apartment. There is a double bed. There is also what might be a fold-out sofa bed and a small kitchenette-type arrangement.

Q. And a bathroom?

A. Yes. I didn't go into the bathroom, and I will have to assume there is a bathroom.

Q. After your conversation about sleeping in the bed, [fol. 81] what transpired?

A. I asked him if at any time the five-year old son of Connie Hoffman had slept in the room while he and Connie Hoffman occupied the double bed and he replied that on at least one occasion the boy, Ralph Gonzalez, age 5, had slept on that sofa bed while he and Connie Hoffman occupied the double bed.

Detective Valeriani and I transported Dewey McLaughlin to police headquarters, which is about a block away from the 732 2nd Street address.

On the way down to the police station, Valeriani and myself observed Connie Hoffman walking. I believe she was walking north on Meridian Avenue toward her apartment and she saw Dewey McLaughlin in the police car.

Q. Was this a regular marked police car?

A. No; this is an unmarked car. She observed Dewey McLaughlin in our car and called out something to this

effect, "What is the trouble?" and Detective Valeriani asked her if she would come down to the police station, to the Juvenile Aid Bureau and she said she would and Valeriani and I continued on to the police station.

Q. Did she go in the police car with you?

A. No; she did not. Sometime later, 10 or 15 minutes [fol. 82] passed and Connie Hoffman appeared in the Juvenile Aid Bureau and at that time we asked her certain questions concerning the fact that a Negro male was living with her.

Q. Was the defendant Dewey McLaughlin present at that time?

A. Yes, he was, and Connie Hoffman replied yes, she was living with a negro and what was wrong with it, and "I don't know of any law prohibiting me from living with a negro man. That is all I have to state."

Q. Then what happened?

A. Detective Valeriani questioned the couple further.

Q. Were you present at the time of that conversation?

A. I believe I walked out of the office at that time.

Mr. Gold: You may inquire.

Cross examination.

By Mr. Graves:

Q. Officer Marcus, where did you get your original lead regarding the dependency of the child of Connie Hoffman?

A. My original lead came from Lt. Farrell, who is in [fol. 83] charge of the Juvenile Aid Bureau.

Q. What part, if any, did Dora Goodnick play in this so far as initiating this proceeding that you are talking about?

A. I received the original information from Lt. Farrell. Other than that, I couldn't answer that type question.

Q. You didn't ask Mr. McLaughlin anything about the child, did you?

A. Yes, sir.

Q. What did you ask him?

A. I asked him if the child, Ralph Gonzalez, had ever slept in that sofa bed.

Q. Is that all?

A. Concerning the child?

Q. Yes.

A. To my recollection, yes.

Q. Then isn't it a fact that you initiated a proceeding in the Miami Beach Municipal Court regarding this dependency of the child?

A. That's correct.

Q. You testified in that case?

A. No, I did not.

Q. Do you know the outcome of that trial?

[fol. 84] Mr. Gold: We object. It has no bearing on this charge.

The Court: Sustained.

By Mr. Graves:

Q. Mr. Marcus, on cross examination, did I understand you in response to my question as to whether or not you testified in Miami Beach Municipal Court, that you said you did not testify.

A. With regard to what case.

Q. Regarding the cases of the dependency of the minor child, that is to say Connie Hoffman's son.

A. To my recollection, I don't recall having testified.

Q. If you were there, you would know, wouldn't you? This hasn't been very long ago, officer.

A. To my recollection, I did not testify.

Q. Well now, do you recall testifying in Juvenile Court.

A. No; I did not testify in Juvenile Court.

Mr. Graves: I have no further questions.

Mr. Gold: Nothing further.

The Court: Call your next witness.

[fol. 85] Thereupon: NICHOLAS VALERIANI was called as a witness by the State of Florida, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gold:

Q. State your name and official position.

A. Nicholas Valeriani, Detective, Department of Police, City of Miami Beach.

Q. Do you know the defendant, Dewey McLaughlin?

A. Yes.

Q. Point him out please.

A. Right there. (Indicating Dewey McLaughlin.)

Q. Do you know the defendant, Connie Hoffman, also known as Connie Gonzalez?

A. Yes.

Q. Do you see her in the courtroom today?

A. Seated to his left. (Indicating Connie Gonzalez.)

Q. When and where did you first come in contact with the defendant.

A. I had seen the defendant Connie Hoffman in the past [fol. 86] in the vicinity of the 1st Street area, but as to the charge here in place I had cause to investigate a condition relative to information that we had had a Negro and a white woman living together with the added information that a child was being neglected. It was, to our information, in her custody.

Q. As a result of this information, what did you do, if anything?

A. October 23rd of — Rather, on February 23, 1962 we had occasion—we were told by our supervisor to go to Apartment 8 at this address and inquire into the condition of the child relative to the lack of supervision and the neglect that was being accorded this child and to talk with Connie Hoffman about it and to place any charges that would be necessary because of these conditions existing that had taken place.

Q. What did you find when you came to the premises?

A. When we went to the premises we knocked on the door at Apartment 8. At that point, as Detective Marcus

knocked, we heard a male voice say, "Connie, come in." We didn't answer anything right away and we knocked again and then he said, "Who is there?" Detective Marcus stated "Police."

[fol. 87] At that point it was quiet for a while and then we heard some talking that appeared to be in Spanish and there was quite an interim there. There was quite a bit of time elapsed and nothing was happening.

We did hear some rustling in the back of this room. Because of the delay in hearing this noise and the back of the room, I went around the back. I was guided there by Mrs. Goodnick. I asked if there was a back way and she pointed that direction to me and as I turned the corner of this bungalow-type structure, I saw this colored male come out from what was another exit, a rear door of this apartment.

Q. Who was that?

A. Dewey McLaughlin who identified himself. I identified myself also. He had come out the door. I had my identification ready. I told him I was a police officer and showed him my identification and, thinking back to it, he did take a second look at my identification and I showed it to him real close.

I asked him for identification and he produced some papers one of which was an ID card or what we call a civilian registration card.

Q. What purpose does that show?

A. Because of the fact that there is a city ordinance in [fol. 88] the city of Miami Beach requiring almost anybody who deals in any type work dealing with the public, they are required to register with the Chief of Police within 48 hours, giving their address and place of employment, et cetera, and so that is mainly what we look for.

Q. Where was Dewey McLaughlin employed?

A. He was employed at the Cavalier Hotel at 1320 Ocean Drive.

Q. On the Beach?

A. That is not what was stated on that police card and I noticed right off, of course, that the police card read "Expiration Date." He had registered January 12, 1961 and this was February 23, 1962 and having information he was still working there and through his admissions that he was working at a different hotel now, we used that information.

Cognizant of these other circumstances of their living together and this child being in utter neglect for a lengthy period of time, using that information we arrested him at the scene at that time after he walked in with us. We went in and we had some information relative to his status there.

Q. What did you arrest him for?

A. Failure to make civilian registration.

[fol. 89] Q. When you went back into the apartment, what happened then?

A. We questioned him as to his period of living in this apartment with Connie Hoffman and he stated about two weeks. He was rather hesitant on some of the answers and he was fairly clear on most of them. We took notice of a couple shirts that he admitted to owning that were hanging up at the foot of this double bed that was in this apartment and that he stated were his. One of them was part of a uniform from Nassau, I believe, or Bahamian, whatever country he came from. It was part of his uniform and was hanging up and most of the questioning wasn't too lengthy in this about the relationship and his status with Connie Hoffman and the child.

Q. Tell us what was said.

A. Detective Marcus asked how long he had been living there. He said about two weeks.

Mr. Graves: Pardon me. Your Honor please, we should like for you to instruct the jury again.

The Court: Yes. Members of the jury, you are again reminded that you are instructed to ignore anything said by one defendant in the way of admissions or otherwise; [fol. 90] that you are to disregard those statements as to the defendant Connie Hoffman who was not there and had nothing to do with the conversation.

By Mr. Gold:

Q. All right. What language was the conversation had in?

A. He started talking in Spanish. Since I have knowledge of the Spanish language—

Q. Do you speak fluently?

A. Rather fluently and I understand fluently and I speak well and read very well, in Spanish, having an Italian back-

ground and having taken police conversational Spanish and I get to interpret occasionally, so when he saw I couldn't understand him and make myself clear in Spanish, he started making statements, understood and speaking in English, as far as answering my questions.

Q. Relate the conversation you heard between the defendant and Detective Marcus.

A. Detective Marcus asked him if he had been living in this apartment for what period of time and he thought, and he said, "About two weeks," and Mr. Marcus asked if he had sexual relations with the woman, and that, he had trouble. You could see he was very hesitant, hesitated, and finally it was gotten across that he understood and that they were sleeping in the bed and that they had been for [fol. 91] that period of time and I asked him also if the child was ever present.

There was this double bed and at the foot of the double bed with a little space there was a small couch set up and Mr. McLaughlin at that point related that on at least one occasion this five-year old had been in there while they were in the course of spending the evening there.

He was asked where he worked and he related he was working there now, doing a porter's job. We asked about his uniform and he said he had been in the Nassau military and he did come up with the fact that he was not in the Nassau military any more but that he had been, and with that brief conversation he was placed under arrest for failure to make civilian re-registration and the fact that he was working at another hotel.

We were going to bring him to the station and as we headed toward the station south on Meridian Avenue, we saw Connie Hoffman walking north, heading toward her apartment.

At that point she hollered, calling him Marcus. She said, "Where are you going?" and we told her he was under arrest and being brought to the station and she was told [fol. 92] if she could come down there, and she said she would, and she did within minutes, and as we were continuing our questioning of Dewey McLaughlin, she came in in somewhat of a furor and wanted to know what he was doing there.

She was told he was under arrest for failure to make civilian re-registration and we had knowledge that they were living together there and that he had stated that they had been there two weeks and she said, "You tell him the whole truth: It isn't only two weeks," she said, "We have been living together over three months," and said they then had lived in Miami for several months, three months approximately before that.

Q. Both defendants were present at that time?

A. Yes; they were both present with Detective Marcus and myself in this juvenile office and at this point we asked her where the child was, if she had any knowledge where her child was and she said no, and when I questioned her further about that she got very huffy about this Floyd Hoffman who we had information had been living with her prior to this incident, and she blamed him for sending the child over, so to speak, and that the child was staying at his place and that she couldn't control him and he was all-[fol. 93] ways taking off on her—the child, that is—and, of course, we were interested in this information too, because we had seen the child ourselves and he had been observed by the police officers in this alley that the police cars stood on all hours of the day and night and this child was seen as late as 11 o'clock and 12 o'clock at night unattended, unsupervised and running around.

This happened because the party she had been living with before, this Fred Hoffman, worked for a garage that was contracted by the City to tow cars for police violations, so that when Mr. Hoffman would leave this child, he would run out and was on his own for periods of time, so possibly she was believing he was up there when he wasn't; and we found out she had custody of this child so she was questioned further about that and she was placed under arrest for the contributing to the dependency charge.

Q. Then what happened?

A. Detective Marcus appeared at the Municipal Court hearing on the following Monday. This was a Friday evening, and the defendant was found--

Q. Did you have occasion to go back to the defendant's apartment?

[fol. 94] A. Yes. It was on the afternoon of the 28th and we reported for work and Detective Farrell informed us the conditions of their living together was still existing.

Q. Do you know how it was brought to the attention of the police in the first place that they were living together, a Negro man and a white woman living together?

A. Information had been gotten which was received by Lieutenant Farrell in their office.

Q. From Mrs. Goodnick?

A. From Mrs. Goodnick and neighbors, I understand—I was told.

Q. You went back there on the 28th?

A. Yes. Detective Kennedy was sent to the Cavalier Hotel where I had checked at an earlier time in reference to McLaughlin's status and he went and arrested Mr. McLaughlin on this stated charge. That was about 3:10. About 3:30 he returned to the office and we went to Apartment 8, back to the original apartment, and we knocked on the door and Connie Hoffman answered and she stated she was taking a shower so we waited a few minutes and she came to the door clothed and we informed her of the charge and she was not placed under arrest for that charge and she [fol. 95] became very vehement.

Q. What did you tell her she was charged with?

A. Under State statute not permitting a Negro and a white female living together and she said she never heard of any such law; she never heard of any law that a Negro and a white woman couldn't live together and she didn't believe it, and with that charge she with some hesitancy and not feeling too good and being huffy, she did get in the car and accompany us to the station, whereupon she was booked.

As we entered there she spotted Dewey McLaughlin and I overheard her tell him, "He doesn't know a thing, not to say anything, he doesn't understand anything," and at that point Mr. McLaughlin obliged her and couldn't speak English and couldn't understand anything.

Mr. Gold: You may inquire.

Cross examination.

By Mr. Graves:

Q. Officer, I think you testified that you had a conversation with Dewey McLaughlin in Spanish.

A. Yes. It wasn't a conversation. I made a couple inquiries when I started talking Spanish.

[fol. 96] Q. How long have you been familiar with the Spanish language?

A. Several years, approximately six or eight years. Actually much longer than that, but as far as conversational Spanish—

Q. You know conversational Spanish?

A. Yes.

Q. From the subject in Spanish were you able to ascertain possibly what country he came from?

A. He said Honduras. He mentioned Honduras but that was brought out in English.

Q. Did he speak Spanish very fluently?

A. Quite fluently.

Q. Officer, have you talked to anybody this morning regarding your testimony which you were going to give in this court?

A. Yes, the Assistant State Attorney.

Q. Anyone else?

A. Since the rule has been invoked, no, sir.

Q. What prior to the invoking of the rule?

A. Before we came to the courtroom.

Q. Who did you discuss it with?

A. There wasn't any discussion on it. There was mention of the case.

[fol. 97] Q. Did you talk to Mr. Marcus?

A. No, not since the rule has been invoked.

Q. What about before, though. You came over together this morning, didn't you?

A. No, we did not. I am on duty and Detective Marcus came over from home.

Q. You have been working for several years with the Miami Beach Police Department, have you not?

A. Yes; it will be eight years in December.

Q. And during that eight years you have become quite familiar with Fred Hoffman, haven't you?

A. No, sir; I have not. Some individuals, it is true, in the department have, but I have not had occasion to become familiar with him.

Q. Fred Hoffman has some connection with the Miami Beach Police Department, doesn't he?

Mr. Gold: I object your Honor. I don't see the materiality.

The Court: Overruled.

The Witness: He is one of the garages that is contracted by the city to tow in vehicles.

Q. And he works on the premises of the Miami Beach [fol. 98] police department, doesn't he?

A. No.

Q. He never comes over there?

A. He comes over there— I am not too familiar with the procedure but having learned this from when I worked as desk officer, I know that they come over there with some kind of a turn-in sheet verifying that they have the vehicle in custody to be impounded, and that is brought to the desk and then they leave.

Q. On the night in question when this arrest was made, isn't it a fact that after you inquired as to where Connie Hoffman's child was that Fred Hoffman brought the child to the police station; isn't that a fact?

A. Yes, sir. He located the child.

Q. Did you ask him where the child was all the time.

A. Yes.

Q. And what did he say?

A. He didn't know. He thought he had him and he didn't have him, and it was on my inquiry and my demand for the child that Fred Hoffman brought him in. He had told me he had been out on a call and I had left word for him as soon as he located the child to bring him to the juvenile [fol. 99] bureau office.

Q. After this juvenile case— After the arrest in this juvenile case, a hearing was had in the City of Miami Beach Municipal Court; is that correct?

A. I was not there but I believe it would have been held on the following morning.

Mr. Gold: I object to any further questions about the hearing. The officer said he wasn't there, so it isn't material.

The Court: Sustained.

By Mr. Graves:

Q. On your direct examination, didn't you testify that Officer Marcus was there?

Mr. Gold: I object, because he wouldn't know of his own knowledge.

Mr. Graves: He testified on direct examination that Officer Marcus was there, which indicates—

The Court: Overrule the objection.

The Witness: He was to represent the City of Miami Beach in that case because he was on duty at that time.

By Mr. Graves:

Q. And the city was represented?

[fol. 100] A. By Detective Marcus, if no one else. To my knowledge he appeared there.

Q. Have you ever studied law, officer?

Mr. Gold: I object to that question, your Honor. I don't think that is material.

The Court: Sustained.

By Mr. Graves:

Q. On several occasions officer, you have alluded to a colored male or Negro male in your direct examination.

A. Yes.

Q. I ask you, do you know what a Negro male is.

A. I believe I have inquired and have had conversations and have been approached—

Q. What is it?

A. I go by the presence, the physical presence and certain features that are predominant that I feel and believe are predominant in colored males.

Q. Any other criteria?

A. I never had any occasion to have any special feelings about it in any way.

Q. You have alluded in your direct examination to a white woman and I ask you what is a white woman?

A. From the many personal observations and experiences [fol. 101] I would say that Connie Hoffman is a white woman.

Q. I just asked you what does the term "white woman" mean. I didn't ask about Connie Hoffman.

A. A person who is light in color of skin.

Q. Hair and eyes?

A. Hair and eyes.

Q. You are familiar with the so-called mixed breeds, aren't you—that is, people who would defy the definition you gave of white and colored.

A. I wouldn't set myself up as an expert. I am of a class of society who can make certain opinions or make statements relating to what, my beliefs are, what we can interpret as a general rule.

Q. All told, how many charges did you prefer against Connie Hoffman and Dewey McLaughlin?

A. Detective Marcus instituted the charges.

Q. How many charges were preferred?

Mr. Gold: It is immaterial to this case, your Honor. There is only one case before this Court.

The Court: Overruled.

By Mr. Graves:

Q. My question is, all together to your knowledge how many charges have been preferred against Connie Hoffman [fol. 102] and Dewey McLaughlin.

A. To my knowledge, on February 23 she was placed under arrest for contributing to the dependency or delinquency of a minor.

Q. Who made that arrest?

A. Detective Marcus.

Q. Detective Marcus was working for the Miami Beach Police Department at that time, was he not?

A. Yes.

Q. What other charges?

A. At that point, that was it. On the 28th she was placed under arrest for living with a Negro male.

Q. A proceeding was initiated in another Court regarding the child, was it not, to which you testified.

A. I was sent over to testify, yes.

Q. Could there be a relationship between all these charges as far as your feelings toward the defendant.

Mr. Gold: I object to that question, your Honor.

The Court: Sustained.

Mr. Graves: You may inquire.

[fol. 103] Cross examination.

By Mr. Gold:

Q. Detective, in the course of your lifetime you have had occasion to associate with many people of different races, Negro and white?

A. Yes.

Q. Would you state to the Court and jury your opinion as to what the race of Dewey McLaughlin is?

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Graves: I object to the question unless it can be established he is qualified to do so.

By Mr. Gold:

Q. First of all it was opened up on cross examination by defense counsel. Second, the State argues it is solely a question of fact and any person can be in a position to give an opinion as to what he feels and it is up to the jury to determine the weight and the whole question of fact in this case. It is a question of fact, not a question of law.

Mr. Graves: If there is going to be full argument, we would like to have the jury excused.

The Court: Yes. As a matter of fact, let's send the jury out to lunch.

Members of the jury, we are going to recess as far as you are concerned until 2 o'clock.

[fol. 104] You will go your own way for lunch, as you please, but if any of you happen to see each other during the lunch hour, you have the same instruction you have been given previously. Don't discuss the case among yourselves or with anyone else or allow it to be discussed in your presence.

You may leave now and come back at 2 o'clock, and make sure you do leave and don't come into the courtroom while we are discussing these legal matters.

(Thereupon the jury retired from the Courtroom, and the following proceedings were had:)

Mr. Graves: Shall we proceed with argument, your Honor?

The Court: Go ahead.

Mr. Graves: If your Honor please, this Statute under which this charge is brought 798.05 is to be construed in light of the definition set forth in Section 1.01, sub-section 6 of the Florida Code which defines the term "Negro: Colored person, mulatto or persons of color."

The Statute says this, your Honor, and I think it is controlling in this case, too: That the words "Negro, colored, [fol. 105] colored person, mulatto, or persons of color when applied to persons include every person having one/eighth or more of African or Negro blood."

I think we are bound by the definition of Negro in Section 1.01. If the State is not prepared to prove a percentage of blood in keeping with the Statute, then I think we even at this juncture are entitled to a directed verdict.

This gentleman has testified as to what he thinks a colored person is and what he thinks a white person is. There are plenty of people who look like they belong to another race. I myself might be a white man as far as this is concerned because nobody has tested my blood and even if they did they couldn't find any Negro blood because there is no such thing.

We have argued this statute is indefinite and vague, but I see no test set forth that the jury can use to set forth whether one of these persons is white and one colored unless some person testifies they tested the blood of each of

them and found eight per cent colored blood in one and $\frac{7}{8}$ ths per cent is white in the other.

The Court: The last time I declared a Statute unconstitutional and indefinite they reversed me and said anybody with common sense would know, and I am afraid that is the way that is going to be, especially when another Judge has already ruled that it is constitutional and definite enough. I will have to take the same attitude and think about common sense.

I think if someone is charged with stealing an automobile, I think people can come in and say something was an automobile by looking at it, and I am going to have to do the same thing in this case.

Mr. Graves: In the case which you just put, regarding an automobile, the term should be—the term “automobile” is one which is used in common parlance and everyone has some understanding of what an automobile is, but here we have the statutory definition and it says in construing any of the statutes of the State of Florida that this term shall be applied in this way.

The Court: That's right.

Mr. Graves: If it can't be shown there is such a thing as Negro blood or white blood, there is no test that the jury can apply in making a finding of fact and therefore, the statute is vague, inasmuch as a reasonable man couldn't [fol. 107] possibly as being a prudent person come up and say, “My course of conduct should be A or B.”

The Court: I think you are reading something into that definition that there might be a difference of opinion on.

Mr. Graves: I don't want to belabor the point but the very beginning of the Chapter says, “In construing this Chapter and each and every word, phrase or part hereof where the context will permit”—and then it says, “Negroes” shall mean a certain thing— $\frac{1}{8}$ th Negro blood, and I submit there is no such thing as Negro or white blood.

The Court: That being so, they must have meant something else.

Mr. Graves: What else could they have meant?

The Court: They meant anyone whose blood is $\frac{1}{8}$ th from a Negro ancestor:

Mr. Graves: If we are going to interpret the word "blood" as meaning ancestor, then there has been no demonstration about whose ancestors belong to whom.

The Court: Then we come back to the appearance again.

Mr. Graves: It becomes now incumbent upon the State [fol. 108] to show who the ancestors were within eight degrees, and I submit they can't do either.

The Court: I still say we have to go by what the intention of the legislature was. I feel that the jury is going to decide this and the Court is going to rule that anybody who had considerable experience in dealing and associating with Negro people and white people will be able to testify to some extent at least as to the race of particular persons. When it comes to a question of a doubt or a reasonable doubt, that is something else, but it is going to be up to the jury.

Court will stand in adjournment until 2 o'clock.

(Thereupon a recess was taken until 2 o'clock P.M. of the same day.)

[fol. 109]

Afternoon Session,

June 28, 1962

2 o'clock P.M.

(Appearances of counsel as noted.)

Thereupon, the following proceedings were had:

Mr. Gold: Before we bring the jury back, I ask that the Court further instruct the jury that any statements made by one defendant in the presence of the other defendant are admissible as to both.

The Court: It depends on the circumstances.

Mr. Tanksley: There have already been some statements made where both were present and since the Court has instructed the jury as to statements made by one not in the presence of the other are not admissible as to the other person, we feel there might be some confusion in the jurors' minds.

The Court: I can't instruct them on that except as the occasion arises. That is not quite true that all admissions made by one defendant in the presence of another are ad-

missible. Sometimes it is, and sometimes it isn't. I can't give that instruction except as the question arises.
[fol. 110] Mr. Gold: May we have the last question and the Court's ruling.

(The pending question was read by the Reporter as above recorded.)

The Court: I might let you do it with one witness in order to get it into the record, but I am not going to let you ask every witness that comes up here. I don't know whether the witness is any more qualified than the jury to form an opinion on that since the defendants are before the Court and jury.

Mr. Gold: Will your Honor let me ask it of this witness, plus any other witness I might determine I want to ask.

The Court: I don't know. It seems sort of—

Mr. Gold: In this case, it was brought out on cross examination as to how he knows and so forth. I think he has opened the door. It was all brought out by cross examination. As I recall the testimony, Mr. Graves asked the witness, "How do you know if he is colored or white?" It was brought out by Mr. Graves and I think we should have a right to ask their opinion.

The Court: I will let you ask this witness.

[fol. 111] It has already been asked and there has been some discussion on cross examination on it but that doesn't mean I am going to allow you to ask every witness that.

The motion for a directed verdict is denied and the objection is overruled.

(Thereupon the jury returned to the Courtroom, and the following proceedings were had:)

Mr. Gold: We concede the presence of the jury in the box and waive polling.

The Court: The jury is in the box. Proceed.

Thereupon: NICHOLAS VALERIANI, the witness on the stand at adjournment resumed the stand, was examined and testified further as follows:

Redirect examination (Continued).

By Mr. Gold:

Q. Officer, I believe I asked you just prior to the jury being sent out before lunch whether or not based on your previous association with people of different races, do you have an opinion as to what race the defendant Dewey McLaughlin is?

A. Yes.

[fol. 112] Q. What is that opinion?

A. Due to my prior factual contacts, experiences and observations and having gone to school with members of the Negro race, I would consider him a Negro.

Q. What is your opinion in reference to the other defendant, Connie Hoffman, also known as Connie Gonzalez?

A. I would say unequivocally that she is a white female.

Mr. Gold: That's all.

Recross examination.

By Mr. Graves:

Q. During your associations with Negroes, you have noticed there are various colors of colored people, are there not?

A. Yes.

Q. Isn't it a fact that by reputation many so-called Negroes or mulattoes are fairer than white people you have associated with?

A. I would presume that to be true.

Q. Well now, could it not be possible that the defendant Hoffman is a Negress in the light of that experience?

A. I would not think so. It may be possible but on [fol. 113] my own observations and from everyday notice-abilities I would not think so.

Q. If you admit that it is possible for her to be a Negro, you could be mistaken in your opinion.

A. I didn't state that and I don't think you had asked it that way. I think you alluded something to the possibility that she may have Negro blood.

Q. I said based upon your association with the colored race; I will ask the question again for clarity: Based upon your association with the colored race, you have found people who are reputed to be colored who are fairer than the defendant Hoffman?

A. Yes.

Q. In the light of that experience, Miss Hoffman could be colored, couldn't she?

A. I would not think so due to her coloring and physical characteristics. I would not think so.

Q. What is it that distinguishes her from fairer mulattoes?

A. Skin texture, her hair, her eyes, coloring.

Q. But you said just a minute ago, officer, that there are people who are reputed to be Negroes who are fairer than Mrs. Hoffman.

[fol. 114] Mr. Gold: I object to any further inquiry. The detective has already answered the question twice.

The Witness: I thought you were referring to fairer than Negroes, fairer than others. That is what you stated.

By Mr. Graves:

Q. Again—

(The pending question was read by the Reporter as above recorded.)

The Witness: I didn't understand the question.

By Mr. Graves:

Q. Is that correct?

A. If that was the question, I wouldn't state that.

Mr. Graves: I have no further questions.

Thereupon: SY LIPPMAN was called as a witness by the State of Florida, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gold:

Q. Please state your name and official position.

A. Sy Lippman, Identification officer, Miami Beach Police [fol. 115] Department.

Mr. Graves: Pardon me, Mr. Gold, may I ask a question concerning this witness' presence in the courtroom?

Mr. Gold: Yes.

By Mr. Graves:

Q. Were you in the courtroom this morning prior to—

Mr. Gold: I think the jury ought to be excluded for this particular question and answer, your Honor.

The Court: I don't think so.

By Mr. Graves:

Q. Were you in the courtroom prior to your coming into that door a few minutes ago?

A. No, sir.

Q. You haven't been here at all?

A. No, sir.

Q. Have you heard any of the testimony in this case?

A. No, sir; not today.

Mr. Graves: All right.

By Mr. Gold:

Q. Your name and official position?

A. Sy Lippman, Identification officer, Miami Beach police [fol. 116] department.

Q. Do you know the defendant, Dewey McLaughlin?

A. Personally, no.

Q. Do you know who he is?

A. Yes.

Q. Do you see him in the courtroom today.

A. Yes.

Q. Point him out.

A. Sitting directly opposite you there. (Indicating the defendant Dewey McLaughlin.)

Q. I show you State's Exhibit 1-B for Identification and ask you to state what that is.

A. This is the official form for fingerprints that we use at the headquarters for arresting parties, arrested people.

Q. Did you take those fingerprints of the defendant?

A. I did.

Mr. Gold: Your Honor, I would like to offer this into evidence as State's Exhibit 2 and would like to substitute a photostatic copy of it since these are official police records.

The Court: Submit it to counsel.

By Mr. Gold:

Q. Is there certain other information which appears on [fol. 117] the card in relationship to the defendant other than the fingerprints?

A. Yes. There is other information—personal data that is filled in there and the fingerprint classification.

Mr. Graves: May I ask the witness a question?

The Court: Yes.

By Mr. Graves:

Q. Mr. Lippman, I suppose this is a standard fingerprint card used by the Miami Beach police department, is it not?

A. Yes, it is.

Q. What is the procedure in compiling the information? Does the suspect or the prisoner type this card up himself or is that done by someone in your office?

A. Somebody in our office does it.

Q. Who did it in this instance?

A. Sgt. Hobson.

Q. Where is Sgt. Hobson now?

A. Out in back.

Q. He is here?

A. Yes.

Q. To your knowledge, does the officer making out these [fol. 118] identification and record cards ask the questions of the individual or does he merely upon observation of the person insert the information on this card.

A. A combination of the two, I would say.

Q. You were not present when this card was compiled?

A. I was.

Q. During the time in which this information was being compiled, who was present?

A. I was present; the prisoner was present and the officer I just mentioned—Sgt. Hobson.

Q. Who was doing the questioning, if you recall?

A. Sgt. Hobson.

Q. Will you please tell the Court and jury exactly what you recall relative to what was said between Officer Hobson and Dewey McLaughlin at the time that this information was compiled.

A. That would be difficult to say. I was present in the office but not necessarily listening to the interview at the time. Exactly what I might have heard as to age, date of birth, place of birth and so forth, I couldn't very well state specifically.

[fol. 119] Q. As a matter of fact, you didn't hear Dewey McLaughlin say that he was a male either, did you?

A. No. There are many things that are presumed; you don't have to ask.

Q. And as a matter of fact— Oh, this is a presumption given on this card.

A. As to male or female?

Q. Yes.

A. Yes.

Q. Is it a presumption he is a porter, also?

A. No; that would have to be asked the persons. The profession would have to be asked.

Q. Do you recall hearing Officer Hobson ask Dewey McLaughlin about his race?

A. I don't recall.

Q. As a matter of fact, you don't know whether Dewey McLaughlin said it at all, do you?

A. I don't know.

Mr. Graves: If your Honor please, we object to this State's Exhibit 1-B on the grounds that the information that it purports to give which would be relevant and material to the issues here are not necessarily the statements [fol. 120] which come from the defendant himself but rather the conclusions of the person who compiled the information, as far as the testimony is at this time.

The Court: So far, yes. Sustained.

Mr. Graves: That's all.

Thereupon: SGT. CURTIS HOBSON was called as a witness by the State of Florida, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gold:

Q. Please state your name.

A. Curtis Hobson.

Q. You are with the City of Miami Beach Police Department?

A. Yes.

Q. Identification Bureau?

A. That's correct.

Q. Do you know the defendant, Dewey McLaughlin?

A. Yes.

Q. Do you see him in the courtroom today?

A. Yes.

Q. Point him out.

[fol. 121] A. There he is. (Indicating the defendant Dewey McLaughlin.)

Q. I show you State's Exhibit 1-B for Identification and ask you to state whether you can identify the same.

A. Yes.

Q. What is that?

A. That is the arrest fingerprint card of Dewey McLaughlin.

Q. What exactly did you have to do with that card?

A. I took the information.

Q. From the defendant?

A. Yes.

Q. Did you type the information?

A. Yes.

Q. Where was the defendant in relationship to you and that card when you were typing the information?

A. He was standing next to me.

Q. Was he in a position to see the card?

A. I can't say. He probably was, but I can't remember exactly where he was standing.

Q. Did the defendant at any time attempt to make any [fol. 122] corrections in the information on that card?

A. No, sir.

Mr. Gold: I will re-offer the exhibit into evidence, your Honor.

By Mr. Graves:

Q. Officer Hobson, who was present when this information was compiled which appears on State's Exhibit 1-B for Identification.

A. Besides myself, the officer who took the fingerprints and the jailer—I can't recall who that was—the jailer. That is all, I guess.

Q. Dewey McLaughlin didn't give you the information that appears on this card, did he?

A. Probably not word for word.

Q. I ask you to look over this exhibit for identification and tell me as closely as you can what information he gave you or told you.

A. I have to have the arrest slip rather than this card. The arrest slip is what has the information, the white arrest slip. That is the one that I filled out.

Q. Then as a matter of fact, officer, as you sit there now you don't know which information, if any, was given to you by Dewey McLaughlin?

A. If I could have that arrest slip I could show you [fol. 123] what questions I asked him.

Mr. Gold: In other words, you based the information on that card from the arrest slip, is that correct?

The Witness: Yes.

Mr. Graves: Just a minute, Mr. Gold. Who compiled that information?

Mr. Gold: Did you compile the information on this arrest slip?

The Witness: I filled it out.

By Mr. Graves:

Q. Mr. Hobson, you say you compiled this information yourself?

A. That's right.

Mr. Gold: Would you show the exhibit to the witness, please.

By Mr. Graves:

Q. Did Dewey McLaughlin give you all that information that appears on that arrest slip?

A. No. Some of this we had. He had a civilian card so it wasn't necessary to ask him each item because I had the information in front of me, some of it—his local address—that I probably asked him, but that also appeared on the little yellow card.

Q. You didn't ask him which race he belonged to, as a matter of fact, did you?

[fol. 124] A. No; there wasn't any reason to. I already had the information.

Mr. Gold: We offer the exhibit into evidence, your Honor. The witness testified the defendant was in a position to observe what was being typed and made no statements in reference to what was being put on that card.

The Court: Was there an objection?

Mr. Graves: If your Honor please, I did object.

The Court: Sustain the objection.

By Mr. Gold:

Q. You also took the information and typed the identification card record for defendant Connie Hoffman; is that correct?

A. Yes.

Q. Did you follow the same procedure?

A. I did.

Mr. Gold: No further questions.

Mr. Graves: We have no further cross examination.

Thereupon: JOSEPHINE DeCESARE was called as a witness by the State of Florida, and having been first duly sworn, was examined and testified as follows:

[fol. 125] Direct examination.

By Mr. Gold:

Q. State your name and official position.

A. Josephine DeCesare, secretary, City Manager's office, Miami Beach.

Q. What was your course of employment on the 12th day of January, 1961.

A. Clerk-typist in the police department.

Q. I show you State's Exhibit 1-D for Identification and ask you if you can identify same.

A. Would you please repeat that.

Q. Tell the jury what this card is.

A. It is a civilian registration for all those who work on Miami Beach.

Q. Who is that civilian registration card for?

A. Dewey McLaughlin.

Q. That card is signed by the defendant, is that correct?

A. Yes.

Q. And there are a series of questions and information on that card?

A. Yes.

Q. You, as the typist, do you ask any of those questions of the persons?

[fol. 126] A. Yes.

Q. Would you read to the Court exactly what questions pertaining to information on that card that you actually asked defendant Dewey McLaughlin.

A. First the name is always verified.

Q. What is above that name?

A. Signature of person fingerprinted. "I certify that I have read the information given here"—I better put on my glasses.

Mr. Graves: While the witness is looking for her glasses, we should like to interpose an objection. We object to this witness testifying as to what the usual procedure is. We would like to have her pinpoint what she did on this particular instance when the information was compiled, if she did anything at all.

Mr. Gold: I believe that is what she is testifying to, your Honor. I asked a specific question.

The Court: That was the question but she didn't actually indicate in her answer. I think you perhaps should be more specific.

By Mr. Gold:

Q. Did you follow the usual procedure in this case?

A. Yes.

[fol. 127] Q. Read what it says there.

A. "I certify that I have read the information given hereon, and that it is true."

Q. Tell me what questions you actually asked the defendant and what answers he gave you.

A. Employment and address.

Q. What did he say to that?

A. At that time it was the Promenade Hotel, 2469 Collins Avenue as a porter. Then his height, his weight, date of birth, color of hair and eyes and then where he was born and if he is a United States citizen.

Q. What else did you ask him?

A. His address. And the last— We try to get a contact address if they have not resided here ten years. If it is over ten years, we don't ask their last northern address— and marital status.

Q. What was the answer?

A. At that time he was separated and his wife's name was Willie McLaughlin, and he did not know her last address.

Mr. Gold: I will offer this, your Honor.

Mr. Graves: May I inquire, just briefly.

[fol. 128] The Court: Yes.

By Mr. Graves:

Q. Mrs. DeCesare, is your method of operating in compiling the information on these cards the same in cases in which the applicant can read and write as it is in cases where he is illiterate.

A. I don't follow you.

Q. If the person supplying the information is illiterate, do you use the same process in compiling the information on these cards as you do when he is literate?

A. That is if he can't read or write? Yes, sir.

Q. The same process?

A. Yes.

Q. Although it says he certified he has read the card and he cannot read it, you use the same process.

A. That he has read the card?

Q. Yes.

A. Usually they have someone with them.

Q. Was anyone with Mr. McLaughlin when he came in to apply for this identification card?

A. Not that I remember.

Q. Do you remember anybody reading the information [fol. 129] on this card to Mr. McLaughlin?

A. Reading? No, sir.

Q. As a matter of fact, you didn't see him read it either, did you?

A. Read what—the card?

Q. This card where it says at the top in the lefthand corner, "I certify that I read the information given hereon and that it is true."

If a person is literate do you use the same procedure in compiling information and getting the certification?

A. If they cannot write, sir, they signify with an X mark which I witness.

Q. I said read.

A. I am confused.

Q. Do you know whether or not Mr. McLaughlin can read?

A. No.

Q. Do you recall?

A. No.

Q. Did you see him look at this thing.

A. No, sir; he didn't ask for it.

Q. You typed up all this information and then said, "Here, sign this", is that right?

A. No; it is signed before he comes over to me and then [fol. 130] if he wishes to check, he can, after I have interviewed him.

Q. Who else participates in compiling this information besides you?

A. You mean the questions or fingerprints and everything connected with the registration?

Q. The questions.

A. I am the only one.

Q. I want you to think back and see if you can recall whether or not Dewey McLaughlin actually read this thing before putting his signature on it.

A. As I told you, if he read it, he read it before he was fingerprinted; after he got the—after I got the information if he read it, I don't know.

The Court: Did I understand you to say you have him sign it before you put the information down?

The Witness: They can sign it before or after but usually as soon as they come into the office to be fingerprinted the card is handed to them and it is signed. Then after it is filled out, they go back and can check what is written on there. Do I make myself clear?

The Court: Not exactly.

[fol. 131] Mr. Graves: I object to the exception of this exhibit for identification on the grounds that it has a false certificate. It says he read the information on there and it wasn't even there at the time he signed it, according to this testimony.

Mr. Gold: There is some further pertinent information on that card which was elicited directly from the defendant.

The Court: Maybe I better take a look at it.

Mr. Gold: Especially in reference to his marital status, which is apparently an issue in this case.

The Court: Let's not go into what is on here. Sustain the objection.

Mr. Gold: May I have further argument on this point?

The Court: Take the jury out.

(Thereupon the jury retired from the Courtroom, and the following proceedings were had:)

Mr. Gold: Your Honor, the witness testified in response to direct examination about direct questions asked the defendant in reference to his address and also his marital [fol. 132] status. That is an issue in this case, apparently.

The Court: When was it made an issue; I don't remember that.

Mr. Gold: On voir dire.

The Court: You can't make something an issue on voir dire.

Mr. Gold: Also it is set forth in the information.

The Court: What is.

Mr. Gold: It is set forth in the Information, that they are not married. There is no way possible for the defendant McLaughlin to be married to this other defendant if he has a previous wife.

Mr. Graves: Yes, your Honor, but there is something that counsel is over-looking and that is that the information which is on this card was not necessarily given by Dewey McLaughlin.

Mr. Gold: She said it was.

Mr. Graves: She has a certificate that Dewey McLaughlin says everything he says is true.

The Court: There are two things. One is she says he gave the information that is on there and the next thing is that as far as his signature is concerned, there is some [fol. 133] doubt as to whether he certified anything after it was on there.

That is a different question and incidentally that is the point which makes the document itself inadmissible to go before the jury, but she can still testify as to what he told her.

Mr. Graves: My objection is to the reception of the document.

The Court: And I have sustained the objection.

Mr. Tanksley: Would it have to be certified to be admitted in evidence?

The Court: There is some other information on there which she has not yet testified was given to her by the defendant. Race is such a material issue in this case that it could be prejudicial.

By Mr. Gold:

Q. What exactly on this card did you get? Go down this information. You asked his address?

A. Yes.

Q. And his northern address?

A. Yes.

Q. And his marital status?

A. Yes.

The Court: Don't lead her. She can answer. We won't [fol. 134] have the right proceeding here.

By Mr. Gold:

Q. Did you ask about his sex?

A. Why, no.

Q. Did you ask about his race?

A. No. It is quite obvious what the answer to those two questions is.

May I say something—

Mr. Gold: I have no further questions.

The Court: She wants to say something.

The Witness: Anything that is answered by someone else other than the person who signed it usually is signified by a notation or his initial. In other words, when you were referring to someone who could not read or write—

Mr. Graves: I would ordinarily move to strike that, but the jury isn't here and what they usually do has nothing to do with what was done in this particular case.

The Witness: We do the same thing in every case.

By Mr. Graves:

Q. You will admit you testified you don't know what you did in some respects in this case; is that not so?

A. No; I know what I did. I said I did not ask the question [fol. 135] pertaining to sex or race. Everything else I asked. Otherwise, how would I get the information?

Q. Specifically, what did you ask when you asked about his marital status?

A. Was he married, single, separated, divorced or a widower.

Q. You didn't go into any discussion with him as to whether or not he had a divorce?

A. No, sir. He has to answer which one of those is correct.

Q. As a matter of fact, you don't know whether he is now or ever was married?

Mr. Gold: I object to the question.

The Court: All she could know is what he said.

By Mr. Graves:

Q. But he said he was separated?

A. Yes.

Q. And he didn't say legally separated; or did he?

A. No.

Mr. Gold: A legal separation is not a divorce. Counsel should know that.

Mr. Graves: We are speaking in terms of what the ordinary citizen would walk in and if somebody would say, "What is your marital status?"

The Court: She testifies she gives him certain alternatives.

By Mr. Gold:

Q. Did you ask whether or not he was divorced, specifically?

A. Yes. "Are you married, single, separated, divorced or a widower, or a widow?"

Mr. Gold: I want to ask one question: Since apparently the Court's only objection to this card is the fact of the certifying aspect, I have a photostatic copy. Would it be permissible if the certificate was just cut off from the rest of the document since that seems to be the basis of the Court's sustaining the objection? As a matter of fact, the photostat doesn't even have the signature on it.

Mr. Graves: I thought your Honor ruled that the original was not even admissible.

Mr. Gold: I was going to offer to substitute the photostatic copy for the original, if the original was permissible, but if necessary I will cut it off the original if counsel

won't agree to have me substitute and I would request to substitute the photostatic copy.

[fol. 137] The Court: I don't know how it can be admissible.

Mr. Gold: Your Honor indicated that the only objection was on the basis—or the basis for having sustained the objection, was the fact that the defendant probably signed the card before the information was written on it and that it was a certificate that he himself certified that the information is true.

The Court indicated that would be prejudicial. I am saying I think the information on the card would be admissible.

The Court: How can it be held against him if he doesn't sign it.

Mr. Gold: The witness has testified it is a record that he is in a position to see— This is not a fingerprint or arrest card. This is an application for a civilian ID card. It has nothing to do with any criminal process.

The Court: The fact that it is written down would have no more weight than the fact that she asked a question and he gave her the answer. She can testify that he did. The fact that she wrote it down doesn't add anything. I don't understand the argument on that point. She can testify as to what she asked and what he said. The document is not [fol. 138] admissible because there is some doubt as to whether he read it and certified to its accuracy.

Bring the jury in.

(Thereupon the jury returned to the Courtroom and the following proceedings were had:)

Mr. Gold: State concedes the presence of the jury.

Mr. Graves: Defense does likewise, and waives polling thereof.

By Mr. Gold:

Q. You said you were employed at one time as a typist for the City of Miami police department?

A. Yes.

Q. During the course of your employment you had occasion to see Dewey McLaughlin?

A. Yes.

Q. What was that for?

A. Civilian registration.

Q. In the course of your contact with him did you ask him various questions and did he make various responses to those questions?

A. Yes.

Q. Tell us what questions you asked him and what he responded. You may use your notes to refresh your memory.

[fol. 139] Mr. Graves: I would like to have counsel pin down the time and place of the conversation between the witness and the defendant.

The Court: All right.

By Mr. Gold:

Q. Tell us when this took place.

A. January 12, 1961.

Q. Where?

A. In the police identification bureau in the Miami Beach police department.

Mr. Graves: I would like to interpose an objection. The effect of this witness' testimony is at a time prior to the time when this offense was alleged to have occurred. Are we going to get into his marital status some time before.

The Court: I think you will find there is some other information which might lead to a different later time element. Overrule the objection anyway.

By Mr. Gold:

Q. Tell us what actual questions you asked him and what answers he gave?

A. When—the first time when I interviewed him I asked him his name. He had just signed Dewey McLaughlin—he had no middle name. I asked where he worked—Promenade Hotel as a porter. Then I asked his height and [fol. 140] weight. Do you want that information? And the date of birth.

Q. What was that?

A. October 10, 1923 and his color of eyes and hair.

Q. What did he tell you about his color of hair?

A. Brown.

Q. And his eyes?

A. Brown, and place of birth was Lacieba, Honduras, and I asked if he were a United States citizen?

Q. What did he say to that?

A. Yes.

Q. What else?

A. His local address at that time was 1106 Northeast 1st Avenue, Apartment 311, and the last address before he came to Miami was Lacieba, Honduras and his marital status, I asked if he were married, single, separated, divorced or a widower.

Q. What did he say?

A. He said separated and I asked for the name of his wife and he said Willie May McLaughlin, and he did not know her last address.

Q. Did you ask any specific questions in reference to the defendant's race?

[fol. 141] A. No; that question I did not ask.

Q. Did you yourself have an occasion to see the defendant on a later occasion?

A. No, sir.

Mr. Gold: No further questions.

Mr. Graves: No cross examination.

Thereupon: DOROTHY KAABE was called as a witness by the State of Florida and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gold:

Q. Please state your full name and address.

A. Dorothy Kaabe, 1775 Coley Drive, Normandy Isle, Miami Beach.

Q. By whom are you employed?

A. Florida State Department of Public Welfare.

Q. What capacity is your employment?

A. Child welfare worker.

Q. In the course of your employment did you have an occasion at any particular time to have a conversation with [fol. 142] one Connie Hoffman, also known as Connie Gonzalez?

A. Yes.

Q. Do you see that person in the courtroom today?

A. Yes.

Q. Point her out, please.

A. (Indicating Connie Hoffman.)

Q. When did that conversation take place?

A. It was March 5, 1962 at 2 o'clock in my office.

Q. In the State Department of Public Welfare?

A. Yes.

Q. Who else was present besides yourself and the defendant, Connie Hoffman?

A. There was no one else present.

Q. Would you please relate that conversation to the Court and jury.

A. Connie Gonzalez came to my office on my request to discuss the child that she had and we had in our care. I had to inquire of her as to her background; her police report that had come in had said her name was Connie Gonzalez, also known as Connie Hoffman, so therefore I had to inquire where these names came from.

She related to me that the child's father was Robert Gonzalez, with whom she lived for about five months and [fol. 143] this was in 1956.

She said she left Mr. Gonzalez before the child was born and when the child was four months old she lived—she stated she lived in a common-law relationship with Mr. Gonzalez.

I asked if she had ever legally married him and she said no, she had never had a legal divorce. When the child was four months old she said she moved in with a man named Fred Hoffman and she said she lived intermittently with Mr. Hoffman for approximately five years and he was the sole support for herself and her child, and I asked if she had legally married Mr. Hoffman and she said no, because of his age.

Mr. Hoffman is at present 59 years old, and she said sometime in September or October of 1961 she left Mr.

Hoffman and took another apartment on Miami Beach and she began living with Mr. McLaughlin as her common-law husband.

She said she had no legal marriage to this man but she stated there had been no marriages nor any divorces.

Q. Did you have any conversation at all with Connie Hoffman as to what her racial status was?

A. Yes.

[fol. 144] Q. Tell us what was said along those lines.

A. She said she was white. The reason this came up was because the report I had gotten from the Juvenile Bureau stated she had been living with Dewey McLaughlin and in the course of her conversation she told me she had retained Attorney Graves and I asked why she had an attorney and she told me the reason she had been arrested was because she was living with a Negro man on the Beach and the police had arrested her, so she had gotten Attorney Graves to help her.

I asked if she knew there was a Statute prohibiting that and she said yes she did but she intended to go to the Supreme Court.

Q. But in response to that question she did say she was of the white race?

A. And I questioned whether Mr. McLaughlin was a Negro and she said yes, but she believed his grandmother was white.

Q. She told you Mr. McLaughlin was a Negro?

A. Yes.

Q. Did the defendant Connie Hoffman state to you anything about her family background other than what you have testified?

A. Her immediate family?

Q. Yes.

[fol. 145] A. Yes. I questioned whether there were any relatives available who might be able to take care of the child. She mentioned she had a mother who lived in Birmingham, Alabama but she would rather her mother not be notified of this because she intended handling it herself.

She mentioned she had a brother who was a leader of the KKK in Alabama. She said she had one brother living in Miami.

Q. Did she indicate where she was born?

A. She told me she was born in Birmingham, Alabama.

Mr. Gold: You may inquire.

Cross examination.

By Mr. Graves:

Q. Miss Kaabe, at the time that you had this conversation with the defendant Connie Hoffman, did you advise her that the information which she was giving you might be used in a court of law or anything like that?

Mr. Gold: I object to that. First of all, she is not a policewoman and not obligated under the law to advise anybody as to what their rights are. It is an improper question.

The Court: Overruled.

[fol. 146] The Witness: I advised her that the information she had given me was confidential but if I am subpoenaed into court I must present this information.

Q. Isn't it a fact that at the time the conversation took place that Connie Hoffman's son was in the custody of the State Welfare Board?

A. That's right.

Q. And isn't it a fact that she gave that information expecting to cooperate and get the child back. Isn't that her reason for being there?

A. Yes.

Q. By the way, how did the State Welfare Board get into this matter?

A. What matter?

Q. Into the matter of the custody of the child and the dependency question.

A. The child was placed in our care by the Juvenile Court.

Q. Do you know the history of the case?

A. From the police report, yes.

Q. Was it referred to the Juvenile Court by the police department?

A. By the Miami Beach police department.

Q. Did you ask Mrs. McLaughlin about her background [fol. 147] when she was questioned by you in your office?

A. Yes.

Q. What did she say about the years she had been in school, if anything?

A. I believe she stated that she went to about the eighth grade or higher than that and then she had to leave home because her mother was ill and she had to go to work.

Q. She didn't say anything about any professional training of any kind, did she?

A. No, she didn't.

Q. So any opinion which Mrs. Hoffman gave you relative to the racial status of anybody involved here would be only an opinion, wouldn't it?

A. Yes.

Q. As a matter of fact, very few people really know what a Negro is; is that right?

Mr. Gold: I object to that as argumentative.

The Court: Sustained.

By Mr. Graves:

Q. Do you know what a Negro is?

A. I am not sure I understand your question.

Q. I don't know that I can make it any simpler. Do you know what a Negro is.

[fol. 148] A. A Negro is a human being, one of three races.

Q. What distinguishing characteristics are there between the Negro race and other races?

A. Skin color, facial—

Q. How long have you been employed by the State Welfare Board?

A. Two years.

Q. You have been here in Miami?

A. Yes.

Q. You have had a pretty good opportunity to observe people who are commonly referred to as Negroes, haven't you?

A. Yes.

Q. Isn't it a fact that in your experience you have found there are many people who are reputedly Negroes who are by far fairer than white people who are accepted as such?

A. Yes.

Mr. Gold: I don't quite understand the question.

(Thereupon the question was read by the Reporter as above recorded.)

By Mr. Graves:

Q. Isn't it a fact, Mrs. Kaabe, that you have known in [fol. 149] stances when a person who is reputed to be a Negro would have the same texture of hair as people who are reputed to be white?

A. I have never known anyone personally.

Q. What about those that you have been associated with on a casual basis, more or less.

A. Would you repeat your question?

Q. I am referring back to the question I just asked about the texture of the hair. What about Negroes or people who are reputed to be Negroes having the same texture of hair as white people who are accepted as being Caucasian? Have you had any kind of experience such as that, even though you didn't know them personally?

A. No, sir.

Q. You have never known of such?

A. No.

Q. In other words, the very light-skinned Negro whom you have seen who could be easily confused with what your conception of a Caucasian is—

Mr. Gold: Your Honor, I object to the question as argumentative.

The Court: Sustained.

By Mr. Graves:

Q. Mrs. Kaabe, I wish you would reflect back to the conversation between you and Mrs. Hoffman and tell me [fol. 150] whether or not Mrs. Hoffman said in response to your question as to Dewey McLaughlin's race, "He is charged with being a Negro"?

A. Mrs. Hoffman said that she was arrested because she had been living with a Negro.

Mr. Gold: Will you speak louder?

The Witness: Mrs. Hoffman told me she had been arrested because she was living with a Negro. She did not say Mr. McLaughlin had been charged nor arrested. She said she was arrested.

Mr. Graves: No further questions, your Honor.

Mr. Gold: At this time the State will proffer the persons of the defendants to the jury for their consideration.

Mr. Graves: If your Honor please, at this time we would like to have the jury excluded and the witness step out also.

(Thereupon the jury retired from the Courtroom and the following proceedings were had:)

Mr. Graves: If your Honor please, the State now offers in evidence, I suppose, Exhibits 2 and 3, being the defendants, which is highly improper and to which we very strenuously object for this reason:

One, it isn't their desire to be proffered; two, if they do not desire to be proffered, as evidence in this case, then the [fol. 151] effect of the thing is the requirement that they offer evidence and testimony against themselves which is self-incrimination, pure and simple.

I have a case here, your Honor, which is on point here. I didn't find a Florida case, but we have an Alabama case, *Wells v. State* 101 Southern 624. In that case the question came up as to whether or not the State could require the defendant to match his footprints with certain footprints found at the scene of the crime, and this question came up as to whether or not to require him to do so would be self-incriminatory. The Supreme Court of Alabama held this would be self-incrimination.

Mr. Gold: I have a later Alabama case which is more on point. It basically states it was not error for the State to proffer the defendant to the jury. 101 Southern 417, *Wilson v. Hote*.

The Court: Apparently there is a lot of disagreement on the subject but at any rate, it is the opinion of this Court that the State can't proffer the persons of the defendants in evidence or otherwise. You might be able to compel them to stand up and be identified but you cannot offer in evi-

dence which is actually what you are doing, the persons of the defendants against their will.
[fol. 152] Mr. Gold: State rests.

MOTION FOR DIRECTED VERDICT AND DENIAL THEREOF

Mr. Graves: May it please the Court at this time on behalf of both defendants, we renew our motion for a directed verdict on the grounds that the State has failed to prove a prima facie case in that the State has failed to prove the race of either Connie McLaughlin or Connie Hoffman or Dewey McLaughlin.

We submit this is a criminal proceeding in which the State is required to prove beyond and to the exclusion of a reasonable doubt that all of the allegations in their Information are true and in this case we have a Statutory definition of what is a Negro.

There has been no one to take the stand who could unequivocally testify to whether either Connie Hoffman was a member of the white race or whether Dewey McLaughlin was a member of the colored race.

They made various attempts to get evidence in which would amount to confessions that they were members of the respective races which your Honor has excluded.

We submit since the State has not proved all of the allegations of the case on their direct case that we are entitled to a directed verdict and that the defendants be discharged at this time.

The Court: Motion denied. Are you going to put on any [fol. 153] testimony?

Mr. Graves: There is something I omitted, and that is they have failed entirely to prove that these people were not married. That is part of the Statute and the Information.

Mr. Gold: We proved by one's defendant's conversation with the other that she was married to someone else, had a common law marriage and by the statement of Dewey McLaughlin that he had a wife.

Mr. Graves: That is a negative.

Mr. Gold: As a matter of fact, your Honor, the State is not required to prove a negative.

Mr. Graves: You have to prove that they are not married. There has been no testimony at all regarding the

dissolution of any marriages which might have existed prior to the time these people were alleged to have started living together and I think it is incumbent upon them to prove that allegation.

The Court: It has been proved that they both were using different names. There is evidence that the last time there was any record was separated from a former wife and possibly still is. Any statements by the other defendant to welfare workers, and otherwise of various relationships with people. The motion is denied.

[fol. 154] Mr. Graves: The welfare worker testified Connie Hoffman told her she was married to Dewey McLaughlin.

Mr. Gold: That was her statement.

Mr. Tanksley: She further said she was married to Gonzalez; that she never obtained a divorce. She had a child by this man and then she started living with Hoffman and did not marry him because he was too old and then started living with Dewey McLaughlin.

The Court: I am pretty sure she said she was never legally married.

Mr. Tanksley: And she said she established one with Gonzalez and she never divorced him and that he is the father of the child she has now.

Mr. Graves: Mrs. Kaabe did not say that Miss McLaughlin said that. Can we check the record?

The Court: Yes, but I am thinking there were other statements made by the defendant to the officers and otherwise which would indicate no marriage. I will deny the motion.

Are you going to put any testimony on?

Mr. Graves: The defendants rest.

The Court: Let's have a recess before we start the argument. [fol. 155] Let's look at the jury charges.

Does the defense have any objection to State's No. 1?

Mr. Graves: No objection to the State's Request of Instructions No. 1.

The Court: State's No. 2?

Mr. Graves: We request the Court to instruct the jury that in reaching a conclusion as to whether or not one of these defendants is a Negro and the other is a white

person, that they are to be guided by the definition which is a part of the Statute under which this Information has been charged, to-wit: that they must find that there is in one person's veins one-eighth Negro blood and the other seven-eighths—

Mr. Gold: Of course I object to counsel's interpretation of that statute. We have had this discussion before, especially as set forth in the charge.

The Court: Let's see the Statute again. What is the State's objection to that definition. Let's leave that one go for a minute. Let's go to the Defendant's No. 1.

Mr. Gold: I object, of course, and request that the Court read the Statute and strike out the veins—that is not in the statute.

I think any reasonable man can infer what the statute refers to.

[fol. 156] The Court: Yes. If the Statute does not say anything about veins, I am not going to instruct them "at least." Also it appears that your "at least seven-eighths" is not correct. "At least" would mean if someone had $\frac{7}{8}$ ths—I think instead of at least seven-eighths, it would be saying more than seven-eighths because if a person was $\frac{7}{8}$ ths white and $\frac{1}{8}$ th colored, or Negro, according that definition, he would be a Negro.

So, therefor, at least seven-eighths is not enough. It would have to be more than seven-eighths.

Mr. Gold: Why doesn't the Court just read "one-eighth or more"?

The Court: I will think about it. Let's go on to No. 2.

Now, No. 3 is denied. We will take a ten-minute recess now.

(A short recess was taken, after which the following proceedings were had:)

The Court: At this time the Court will give its ruling. As to the State's Requested Instructions, requested instruction 1 will be given. State's requested instruction 2 is denied.

As to Defendant's Requested Instruction No. 1 and 2 [fol. 157] will be given, not exactly the same, in the same form, but will be given in connection with the Court's own

instruction. No. 3 is denied. No. 4 is denied but the Court will give an instruction on common-law marriage.

Bring the jury in.

(Thereupon the jury returned to the Courtroom, and the following proceedings were had:)

Mr. Gold: State concedes, waives polling.

Mr. Graves: Defendants likewise.

The Court: The jury is in the box. The defense objection to the proffer by the State is sustained and the jury will disregard the last statement of the prosecuting attorney.

Does the State rest?

Mr. Gold: Yes.

Mr. Graves: Defense rests, your Honor.

The Court: Proceed with the argument. Defense has opening.

WAIVER OF ARGUMENTS BY COUNSEL FOR THE PARTIES

Mr. Graves: Defense waives its opening argument.

Mr. Gold: State will waive argument, your Honor.

The Court: In that event, we will have to have another five-minute recess to get the instructions in order.

[fol. 158] Mr. Gold: Will the Court make some instruction to the jury as to why there is no argument.

The Court: Yes.

(Thereupon a short recess was taken, after which the jury returned to the Courtroom and the following proceedings were had:)

Mr. Gold: State concedes the presence of the jury.

Mr. Graves: Defense concedes.

COURT'S CHARGE TO JURY

The Court: Members of the jury, counsel for both sides having waived argument, the Court will charge you without further ado, all of the testimony being in.

Members of the jury, the State of Florida by Information filed in this Court has charged the defendants, Connie Hoffman, also known as Connie Gonzalez, and Dewey McLaughlin, with the charge of a Negro man and white woman

habitually occupying the same room, charging in the body of the Information that Connie Hoffman, also known as Connie Gonzalez, and Dewey McLaughlin on the 23rd day of February, 1962 in the County and State aforesaid, the said Dewey McLaughlin being a Negro man and the said Connie Hoffman, also known as Connie Gonzalez, being a [fol. 159] white woman, who were not married to each other, have habitually lived and occupied in the nighttime in the same room in violation of 798.05, Florida Statutes, contrary to the form of the Statute in such cases made and provided and against the peace and dignity of the State of Florida.

To that Information the defendants entered their pleas of not guilty. This plea, or pleas, together with the Information, constitute the issues which you have to decide.

The Statute which the defendants are charged with having violated reads as follows:

"Any Negro man and white woman or any white man and Negro woman who are not married to each other who shall habitually live in and occupy in the nighttime the same room shall be guilty of a misdemeanor."

That is the gist of the Statute.

Another Statute of the State of Florida defines certain words as follows:

"The words 'Negro, colored, colored person, mulatto or persons of color' when applied to persons include every person having one-eighth or more of African or Negro blood."

I instruct you that the elements of the crime charged in [fol. 160] this case and which must be proved to you beyond and beyond the exclusion of every reasonable doubt are as follows: That one defendant, in this case has at least one-eighth Negro blood, and that the other defendant has more than seven-eighths white blood; two, that defendants have habitually or did habitually live in and occupy the same room during the nighttime and three, that defendants were not married to each other at the time of the alleged offense.

Now, members of the jury, "there has been in this case some mention of common-law marriage." I instruct you that there is in the State of Florida what is known as a common-law marriage which is as valid a marriage under our law as a marriage which has been solemnized formally. However, a common-law marriage is not a marriage of a lesser solemnity than a formal marriage, contrary to the beliefs of many laymen. A common-law marriage is just as strong as a formal marriage and it is necessary that the same conditions be complied with before a valid common-law marriage can be assumed.

To constitute a valid common-law marriage there must be an agreement to become husband and wife immediately [fol. 161] from the time when the mutual consent is given and an express future condition is absolutely fatal to a claim of marriage. A common-law marriage cannot be terminated except by death or divorce just like any other marriage. A common-law marriage cannot be entered into by parties who are already married to other persons, either common-law or otherwise.

The same instructions adhere as far as the blood relationship between the parties, if any, any racial restrictions, whether by law or any other restrictions set by law to a marriage between two persons.

I further instruct you that in the State of Florida it is unlawful for any white female person residing or being in this State to intermarry with any Negro male person and every marriage performed or solemnized in contravention of the above provision shall be utterly null and void.

The only possible valid marriage between such persons would be a marriage entered into in a State or country in which such marriage is legal, and the parties then come into the State of Florida.

Members of the jury, the defendants enter into the trial of this case clothed with a presumption of innocence. That presumption remains with them throughout the trial un- [fol. 162] less the State, if it can, overcomes that presumption and proves their guilt to your satisfaction to the exclusion of and beyond a reasonable doubt. To overcome this presumption and prove or establish guilt, it isn't sufficient to furnish a mere preponderance tending to prove

guilt, nor to prove a mere probability of guilt or suspicious circumstances, but proof of guilt to the exclusion of and beyond a reasonable doubt is indispensable.

The burden of such proof is on the State and it is to the evidence introduced upon the trial and to it alone that you are to look for such proof. The burden of proof is upon the State to prove all the material allegations of the Information to your satisfaction beyond a reasonable doubt, and if the State does that, it is your duty as jurors under your oath to find the defendants guilty, but if the State fails to do that then under your oaths as jurors you are to give the defendants the benefit of any reasonable doubt and acquit them.

By "reasonable doubt" is meant a real doubt arising from the evidence or lack of evidence in the case and not a mere fanciful or imaginary doubt, but one for which you can give your minds and consciences a satisfactory reason after considering all the facts and circumstances in the case.

[fol. 163] Having a reasonable doubt is that stage of the case which after a consideration of the entire testimony the jurors' minds are in that condition that they cannot say they feel an abiding conviction to a reasonable certainty of the truth of the charge.

You are the sole judges of the credibility of the witness and of the weight and credit to be given to their testimony. In determining that, you will look to all the facts and circumstances in the case, the witness' manner of testifying, their demeanor upon the witness stand, their intelligence, their bias or prejudice if the same should appear from the trial, their means and opportunity of knowing the facts about which they testify, their interest or lack of interest in the outcome of the case, the probability or improbability of their testimony and the reasonableness or unreasonableness of their testimony as judged by your common sense and everyday experience.

If there are any conflicts in the evidence you will reconcile those conflicts if you can without imputing perjury to any witness, but if you find conflicts which you cannot reconcile, take that testimony which you believe to be true and reject that testimony which you believe to be untrue, but

in any event, let your verdict speak the truth as you find it. [fol. 164] The defendants did not take the witness stand. Under the law of this State they have a right to refrain from taking the stand, and that is not to be considered by you either for or against the defendants.

The credibility of admissions, if any, made by the defendants is for the jury to determine. You are to determine the credence which should be attached to the alleged admissions and every part thereof. It is your duty to give such admissions a fair and unprejudiced consideration. The admissions should be considered as a whole. You should fairly consider the time and all the circumstances of their making, their harmony or inconsistency in themselves or with the other evidence in the case and the motives which may have operated on the parties in making them.

Admissions should be received, considered and weighed by you with great care and caution, but if you find in fact that the defendants or either of them made confessions or admissions freely and voluntarily, you will then give effect to such part thereof as you find sufficient reason to credit and reject that which you find sufficient reason to disbelieve.

You are to determine the credence which should be attached to the alleged admissions and every part thereof. [fol. 165] and again I repeat the instructions I have given you previously that any admissions made by one defendant cannot be held against the other defendant but only against the defendant who made such admission, if any.

During the course of the trial various rulings have been made by the Court. From these rulings or from anything that has occurred during the trial, you are not to infer what the opinion of the Court may be as to the guilt or innocence of the accused.

The question of the guilt or innocence of the defendants is for you alone to decide. The Court makes no suggestion to you as to what has or has not been proven. That is a matter of fact solely within the province of the jury. You should confine your deliberations solely to the evidence which has been presented.

You should not be swayed by sympathy for the defendants nor by prejudice against them because of the type

of charge or for any other reason. You are not to concern yourselves with the penalty that may be imposed if the defendants are found guilty; that is the duty and responsibility of the Court.

You will be handed two verdict forms, one for each defendant and you shall consider and complete these forms [fol. 166] as to each defendant independently. Each verdict form commences a sentence with the words "We, the jury"—then "in Dade County, Florida" and then "find the defendant" and it names the defendant. You will complete each sentence with the word "guilty" or "not guilty" as you find your verdict to be as to each defendant.

Upon entering the jury room you will select a foreman to represent you and that foreman will complete the verdict forms and sign his name on the bottom line indicated for a foreman's signature. Each and every verdict you return must be the unanimous verdict of all six of you.

You will now retire to consider your verdict.

(Thereupon at 4:26 P.M. the jury retired and returned to the Courtroom at 4:50 P.M.)

VERDICTS OF JURY

The Court: Members of the jury, have you arrived at a verdict?

The Foreman: We have, your Honor.

The Court: Hand them to the Clerk.

The Clerk: In the Criminal Court of Record in and for Dade County, Florida, State of Florida vs. Connie Hoffman, also known as Connie Gonzalez, Case No. 62-1385-A. Verdict: We the jury at Miami, Dade County, Florida this 24th day of June 1962 find the defendant Connie Hoffman also known as Connie Gonzalez guilty. So say we all. Lauren S. Seabold, Foreman.

[fol. 167] In the Criminal Court of Record in and for Dade County, Florida, State of Florida vs. Dewey McLaughlin, Case No. 62-1385-B. Verdict: We the jury at Miami, Dade County, Florida, this 24th day of June 1962 find the defendant Dewey McLaughlin guilty. So say we all. Lauren S. Seabold, Foreman.

The Court: Anything on behalf of the defendants before sentence is passed.

Mr. Graves: We have nothing to say, may it please the Court.

SENTENCING OF DEFENDANTS

The Court: Each defendant sentenced to serve thirty days in the county jail and pay a fine of \$150.00 or in lieu thereof an additional thirty days.

(Thereupon the trial was concluded.)

[fol. 168] Certificate of Court Reporter (omitted in printing).

[fol. 169] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 185]

[File-endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CONNIE HOFFMAN also known as CONNIE GONZALEZ and
DEWEY McLAUGHLIN, Defendants-Appellants,

vs.

THE STATE OF FLORIDA, Plaintiff-Appellee.

APPLICATION FOR ORAL ARGUMENT—Filed December 10, 1962

To: The Honorable Justices of the Supreme Court of the State of Florida

The appellants at the time of filing of their main brief respectfully apply to the Court pursuant to the Rules to designate a day for oral argument in due time and to notify the parties thereof.

Robert Ramer, 3041 N. W. Seventh Street, Miami, Florida.

H. L. Braynon, 802 N. W. Second Avenue, Miami,
Florida,

G. E. Graves, Jr., 802 N. W. Second Avenue, Miami,
Florida, Attorneys for Appellants, By G. E.
Graves, Jr., Of Counsel.

Certificate of service (omitted in printing).

[Vol. 202]

Not Final Until Time Expires to File Rehearing Petition
and, If Filed, Determined.

IN THE SUPREME COURT OF FLORIDA

January Term, A. D. 1963

Case No. 31,906

DEWEY McLAUGHLIN and CONNIE HOFFMAN also known as
CONNIE GONZALEZ, Appellants,

vs.

STATE OF FLORIDA, Appellees.

An Appeal from the Criminal Court of Record for Dade
County, Gene Williams, Judge

Robert Ramer, H. L. Braynon and G. E. Graves, for Ap-
pellants

Richard W. Ervin, Attorney General, and James G. Mahor-
ner, Assistant Attorney General, for Appellees

OPINION—Filed May 1, 1963

CALDWELL, J.

This cause is here on appeal from the Criminal Court of
Record of Dade County. The trial court directly passed
upon the validity of a State statute and we, therefore, have
jurisdiction.

Defendants are charged with having violated Fla. Stat. §798.05¹ in that "the said Dewey McLaughlin, being a negro [fol. 203] man, and the said Connie Hoffman, being a white woman, who were not married to each other did habitually live in and occupy in the nighttime the same room." The defendants moved to quash the information on the ground that the aforesaid statute was in violation of the Federal and State Constitutions. The motions were denied. Defendants were then arraigned and entered pleas of not guilty. The jury trial terminated in a verdict of guilty, a sentence of thirty days in the county jail and a fine of \$150 for each defendant.

The defendants contend they were denied equal protection of the laws because "Firstly, the law provides a special criminal prohibition on cohabitation solely for persons who are of different races; or, secondly, if this special statute is equated with the general fornication statute, the higher penalties are imposed on the person whose races differ than would be applicable to persons of the same race who commit the same acts."

In *Pace vs. Alabama*,² the Supreme Court of the United States upheld an Alabama Statute³ prohibiting interracial marriage, adultery or fornication, against the contention that it denied equal protection of the law. Another Alabama Statute⁴ prohibited adultery or fornication between members of the same race but provided a less severe maximum penalty. The Supreme Court speaking through Mr. Justice Field held:

¹ Fla. Stat. §798.05

"Any negro man and white woman, or any white man and negro woman, who are not married to each other, who shall habitually live in and occupy in the nighttime the same room shall be punished by imprisonment not exceeding twelve months, or by fine not exceeding five hundred dollars."

² 106 U. S. 207 (1883).

³ Ala. Code of 1876, §4189 (now Ala. Code, Title 14, §360 [1958]).

⁴ Ala. Code of 1876, §4184 (now Ala. Code, Title 14, §16 [1958]).

"Equality of protection under the laws implies not only accessibility by each one, whatever, his race, on the same terms with others, to the courts of the country for the security of his person and property, but that in the administration of criminal justice he shall not be subjected, for the same offense, to any greater or different punishment . . .

[fol. 204] "The defect in the argument of counsel, consists in his assumption that any discrimination is made by the laws of Alabama in the punishment (sic) provided for the offense for which the plaintiff in error was indicted, when committed by a person of the African race and when committed by a white person. The two sections of the Code cited are entirely consistent. The one prescribes, generally, a punishment for an offense committed between persons of different sexes; the other prescribes punishment for an offense which can only be committed where the two sexes are of different races. There is in neither section any discrimination against either race. Section 4184 equally includes the offense when the persons of the two sexes are both white and when they are both black. Section 4189 applies the same punishment to both offenders, the white and the black. Indeed, the offense against which this latter section is aimed cannot be committed without involving the persons of both races in the same punishment. Whatever discrimination is made in the punishment prescribed in the two sections is directed against the offense designated and not against the person of any particular color or race. The punishment of each offending person, whether white or black, is the same."

The appellants seek adjudication of their right to engage in integrated illicit cohabitation upon the same terms as are imposed upon the segregated lapse. But, as was admitted by counsel in argument, this appeal is a mere way station [fol. 205] on the route to the United States Supreme Court where defendants hope that, in the light of supposed social and political advances, they may find legal endorsement of their ambitions.

This Court is obligated by the sound rule of stare decisis and the precedent of the well written decision in Pace, supra. The Federal Constitution, as it was when construed by the United States Supreme Court in that case, is quite adequate but if the new-found concept of "social justice" has out-dated "the law of the land" as therein announced and, by way of consequence, some new law is necessary, it must be enacted by legislative process or some other court must write it.

Affirmed.

Roberts, C.J., Terrell, Thomas, Thorne and O'Connell, JJ., concurring

Drew, J., agrees to judgment

[fol. 207]

[File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF FLORIDA.

January Term, A. D. 1963

Case No. 31,906

[Title omitted]

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PETITION FOR REHEARING—Filed May 9, 1963

Come now the defendants by their attorneys of record and petition the Court for a rehearing in the above styled cause and assign as grounds therefore:

1.

The Court in its opinion did not pass upon the question of the allowance of the defense of marriage between the parties which was raised in their motion for a new trial in the court below.

2.

The Court relied solely in its opinion upon the dictum of the United States Supreme Court in *Pace v. Alabama*, 106 U.S. 207, thus overlooking subsequent decisions of the Supreme Court of the United States which seemingly reject the reasoning in the said case. These subsequent decisions are:

Sipuel vs. Oklahoma State Regents, 339 U.S. 637

Sweatt v. Painter, 339 U.S. 629

Brown v. Board of Education, 347 U.S. 483

Bolling v. Sharpe, 347 U.S. 497

Shelley v. Kraemer, 334 U.S. 1

Yick Wo v. Hopkins, 118 U.S. 356

Carter v. Texas, 177 U.S. 442

Buchanan v. Warley, 245 U.S. 601

Nixon v. Herndon, 273 U.S. 576

Edwards v. California, 314 U.S. 160

Gibson v. Mississippi, 152 U.S. 565

Strauder v. West Virginia, 100 U.S. 303

G. E. Graves, Jr., 802 N.W. Second Avenue, Miami,
Florida,

and

H. L. Braynon, 802 N.W. Second Avenue, Miami,
Florida, By G. E. Graves, Jr., Of Counsel for Ap-
pellants.

[fol. 210]

IN THE SUPREME COURT OF THE STATE OF FLORIDA

[Title omitted]

REPLY TO PETITION FOR REHEARING—Filed May 11, 1963

Comes now the appellee, the State of Florida, and files the following in reply to the petition for rehearing submitted to this court by the appellants.

I.

The petition for rehearing urges that the court correct its former opinion as to pass upon the allowance of the defense of marriage between the parties.

II.

It is submitted that there are adequate state grounds on which to rule that the trial court did not commit reversible error in instructing the jury that the defendants could not legally marry in the state of Florida. The United States [fol. 211] Supreme Court pointed out in the case of *Durley v. Mayo*, 100 L.Ed 1178, that such court did not review the federal constitutional questions which may have been present in that particular case where there were adequate state grounds to support the holding to which such federal constitutional questions were applicable.

In the instant case, as pointed out on pages 8 and 9 of appellee's brief, there was no evidence which would tend to support the existence of a marriage in this state between the defendants. In fact, as pointed out on pages 8 and 9 of appellee's brief, there was ample evidence from which the jury could conclude that the defendants were not married to each other.

III.

Furthermore, the defendants failed to assign as error the judge's instructing the jury that a marriage between the defendants in the state of Florida would be illegal and void. As is stated in the case of *Mortellaro v. State*, 72 So. 2d 815, a court will generally not consider an error

unless it is the basis of an assignment of error. The assignment of error that the court erred in overruling and denying defendants' motion for new trial is insufficient to support a reversal on the ground that the instruction to the [fol. 212] jury was erroneous. *Green v. State*, 163 So. 712, 121 Fla. 307.

It Is Therefore Submitted that the existing state grounds are such as to make the instant case an improper vehicle on which to test the federal constitutionality of the Florida miscegenation provisions of the Florida constitution. This court, in order to clarify such proposition, is therefore urged to set forth the state grounds for not reversing on the trial judge's instruction relating to the marriage of the defendants, if the court determined such state grounds to be adequate.

Respectfully submitted,

Richard W. Ervin, Attorney General, James G. Mahorner, Assistant Attorney General, Counsel for Appellee.

Certificate of service (omitted in printing).

[fol. 213]

IN THE SUPREME COURT OF THE STATE OF FLORIDA

January Term A. D. 1963

Case No. 31,906

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—May 30, 1963

On consideration of the Petition for Rehearing filed by Attorneys for Appellants,

It Is Ordered by the Court that the said petition be, and the same is hereby, denied.

(The Mandate From This Court Has Today Been Issued and Mailed to the Clerk of the Criminal Court of Record for Dade County)

[fol. 215]

[File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF FLORIDA

Case No. 31,906

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE
UNITED STATES—Filed August 29, 1963

I. Notice is hereby given that Dewey McLaughlin and Connie Hoffman, also known as Connie Gonzalez, the appellants above named, hereby appeal to the Supreme Court of the United States from the final order of the Supreme Court of Florida entered in this action on May 30, 1963, denying appellants petition for rehearing and affirming the judgments of conviction.

This appeal is taken pursuant to 28 U.S.C. Section 1257 (2).

Appellants were convicted of the crime of being a Negro man and white woman not married to each other, who habitually lived in and occupied the same room in the nighttime, in violation of Section 798.05 of the Florida Statutes; appellants each received a sentence of thirty (30) days in the county jail and a fine of one hundred and fifty dollars (\$150.00) and in default thereof an additional thirty (30) days at hard labor. Execution of the sentence was stayed by the Criminal Court of Record of Dade County pending disposition of the appeal to the Supreme Court of the United States.

II. The Clerk will please prepare a transcript of the [fol. 216] entire record in this cause, for transmission to the Clerk of the Supreme Court of the United States.

III. The following questions are presented by this appeal:

Does a conviction deny appellants equal protection of the laws and due process of law under the Fourteenth Amendment to the United States Constitution where:

1. the race of the appellants are necessary elements under the statute defining the alleged crime.
2. the appellants, solely because they differ in race, have their acts subjected to criminal penalties when the same behavior by persons of the same race are not subjected to criminal prohibition.
3. appellants, solely because their race differs, are subjected to a higher maximum penalty under Section 798.05 of the Florida statutes than would be applicable to persons of the same race under Section 798.03 of the Florida statutes, a similar anti-fornication statute.
4. marriage of the parties is a complete defense to the crime charged and such defense is unavailable to the appellants solely because the state laws of Florida prohibit marriage between Negroes and whites.
5. Section 798.05 of the Florida statutes in conjunction with Section 741.11 prohibiting marriage between Negroes and whites in Florida authorizes invasion of [fol. 217] appellants' right to privacy and right to marry.
6. appellants are deprived of fair trial and an opportunity to defend because essential elements of the crime—identification of appellants as "Negro" and "white" are vague and undefined in the statute and the information under which appellants were convicted and no ascertainable standard was utilized at trial to prove these elements of the crime.

Attorneys for Appellants.

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Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York.

Certificate of service (omitted in printing).

[fol. 219] Clerk's Certificate to foregoing transcript
(omitted in printing).

[fol. 220]

SUPREME COURT OF THE UNITED STATES
No. 585, October Term, 1963

DEWEY McLAUGHLIN, et al., Appellants,

vs.

FLORIDA.

ORDER NOTING PROBABLE JURISDICTION—April 27, 1964

Appeal from the Supreme Court of the State of Florida.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.